admission will now have to convince the fact finder of its truth. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

FSM Civil Rule 36, regarding requests for admissions, is intended to expedite discovery and trial, to simplify issues and make litigation more efficient. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

When a party who has admitted matters through a failure to respond to a request for admissions later moves to withdraw and amend its response, and the requesting party has not relied on the admissions to its detriment, the imposition of penalties other than conclusive admission is a sensible approach, as it both avoids binding a party to an untrue and unintended admission and yet helps insure respect for the importance of the rules of procedure and the need for the efficient administration of justice. Leeruw v. Yap, 4 FSM R. 145, 149-50 (Yap 1989).

FSM Civil Rule 36(b) permits a withdrawal of admissions, including admissions by omission, when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Pohnpei v. Kailis, 7 FSM R. 27, 28 (Pon. 1995).

When delay in filing answers to requests for admissions was not caused by bad faith and no prejudice in maintaining the action is caused the requesting party, the late filing may be allowed, under conditions, as a withdrawal or amendment of answers obtained by omission. Pohnpei v. Kailis, 7 FSM R. 27, 29 (Pon. 1995).

Admissions obtained through a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

A court, on motion, may permit withdrawal or amendment of an admission when the presentation of the merits will be subserved thereby and the party who obtained the admission cannot satisfy the court that it will be prejudiced by the withdrawal or amendment. In such a circumstance the court may impose other sanctions. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85-86 (Chk. 1995).

Although a motion to file a late response to the requests for admissions is considered a motion to amend or withdraw, an untimely response to a summary judgment motion cannot be deemed a motion to withdraw or amend. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 86 (Chk. 1995).

In principle there is no difference in treating a motion to allow late filing of admissions as a Rule 36(b) motion to withdraw or amend admissions and of treating the late filing itself as a Rule 36(b) motion. Eko v. Bank of Guam, 7 FSM R. 164, 165-66 (Chk. 1995).

Where the only prejudice to the defendant was the attorney's necessary expenses and in order to permit a presentation of the case on the merits, a court may allow the plaintiff's late filing of answers to requests for admissions conditioned upon his deposit with the court of a sum equal to the expenses incurred. Eko v. Bank of Guam, 7 FSM R. 164, 166 (Chk. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

A defendant who fails to file a timely response to plaintiff's requests for admission, is deemed to have admitted the matter sought to be admitted. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445 (Pon. 1996).

Under Rule 36(a), if a party to whom requests for admission are directed fails to answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted. It is

irrelevant that the request sought admission of so-called ultimate facts. Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 25 (Yap 1999).

A party's requests to admit are deemed admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. Harden v. Primo, 9 FSM R. 571, 573 (Pon. 2000).

When the sanction of deeming all the facts admitted as plaintiff urges in his motion for summary judgment is a severely harsh sanction for defendant's failure to respond to plaintiff's requests to admit, the court may order defendant to submit responses to plaintiff's requests to admit within 30 days, and if defendant fails to respond to plaintiff's requests to admit, or provides an inadequate response, the court may, upon plaintiff's proper motion, deem admitted all of the requested facts and also require defendant to pay plaintiff's attorney's fees in bringing an additional motion. Harden v. Primo, 9 FSM R. 571, 574 (Pon. 2000).

A court may order on its own motion that overdue responses not be deemed admissions of fact because the fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the court's discretion. Overdue responses to requests for admission are not customarily treated as having been admitted in the absence of a showing of actual prejudice to the propounding party combined with no showing of excusable neglect by the responding party. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When requests for admission are irrelevant, improper, scandalous and inflammatory, they will be stricken from the record. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

In answering requests for admission, it is proper, indeed required, for the party answering to admit facts which are already known to the requester if the answering party knows those facts to be true. That is the very purpose of requests for admission, to refine and reduce the number of disputed issues for trial. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

An answer to a request for admission that responds in a cavalier, flip manner: "If such a fact is known to AHPW why should AHPW waste its time to propound this particular question?" is unacceptable, and inimical both to the letter and spirit of Rule 36. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Rule 36 requires specificity, a detailed explanation when a truthful answer cannot be framed, good faith, and fairness. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

A response which fails to admit or deny a proper request for admission does not comply with Rule 36(a)'s requirements if the answering party has not, in fact, made reasonable inquiry, or if information readily obtainable is sufficient to enable him to admit or deny the matter. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

When a party has responded to requests for admission with evasive answers, the court may give that party one more chance and order it to answer the requests for admission in a manner that conforms with the letter and spirit of Rule 36, and order that if that party fails to comply with the order, the requests for admission will be deemed admitted. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Rule 37(b) provides that the court may impose sanctions based upon a party's failure to comply with a court order to compel, and, pursuant to Rules 36(a) and 37(b)(2)(A), the court may deem the facts alleged in a request for admission of facts as admitted for the purposes of the action. Tolenoa v. Timothy, 11 FSM R. 485, 486 (Kos. S. Ct. Tr. 2003).

When the requests for admission seek either facts about events on which the claim is based or facts concerning the authenticity of documents, the requests do not involve attorney work product and the plaintiff will answer the requests. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

If a party fails to respond to another party's requests for admission by a court-ordered date, each request for admission will be deemed admitted by the party unless it calls for admission of a pure matter of law or asks for a legal conclusion. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

Any requests deemed admitted may be used only against the party deemed admitting it. This is because admissions obtained under Rule 36 may be offered in evidence, but are subject to all pertinent objections to admissibility that may be interposed. It is only when the admission is offered against the party that made it that it comes within the exception to the definition of hearsay as an admission of a party opponent. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to the statements or opinions of fact or of the application of law to fact and that each matter will be deemed admitted unless, within 30 days after service of the request, or within such other time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

The court will order the defendant to respond to the plaintiff's requests for admissions by a certain date, and if it does not respond, all of those requests will be deemed admitted, except for any specific request that calls for a legal conclusion. A request for admission that calls for a legal conclusion is beyond the scope of Rule 36 because requests for admissions are not to be used to answer questions of law or to have the responding party ratify the legal conclusions the requestors attach to the case's operative facts. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

Rule 37(a) attorney fee awards do not apply to a failure to respond to a request for admissions, because the automatic admission from the failure to respond is a sufficient remedy for the requesting party, so when part of the motion to compel concerned the movant's request for admissions, the court will reduce the attorney fee award requested for the motion to compel discovery. Stephen v. Chuuk, 13 FSM R. 529, 532 (Chk. 2005).

When a defendant did not provide responses to the plaintiffs' requests for admissions, the requests should be deemed admitted and admissions obtained through such a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Barker v. Chuuk, 16 FSM R. 537, 538-39 (Chk. S. Ct. Tr. 2009).

The late filing of responses to requests for admission is treated as a Rule 36(b) motion to withdraw or amend admissions. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Under Rule 36(b), "the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits," and this test for withdrawal of admissions is more precisely tailored to Rule 36's general purpose than the test generally appropriate under Rule 6(b)(2) for enlargement of time after the period has expired, so that the admission that otherwise would result from the failure to make timely answer should be avoided when to do so will aid in the presentation of the action's merits and will not prejudice the requesting party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Since Rule 36's purpose is to expedite trial by removing uncontested issues, an admission in the case of an untimely reply should not be automatic. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Allowing withdrawal of admissions made by the defendants' untimely response would facilitate the normal, orderly presentation of the case on its merits, which is precisely the objective of Rule 36(b); while denying withdrawal would result in a final judgment for plaintiff without a hearing as to the merits. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

When the movant has not shown that a nineteen-day delay in responding to his requests for admission would prejudice him in any manner and when allowing the withdrawal of admissions made by an untimely response would facilitate the normal, orderly presentation of the case on its merits, the requests for admission deemed admitted because the responses were not filed by September 30, 2010, would be deemed withdrawn and amended by the October 19, 2010 response. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

Under the rules, the matter is admitted unless, within 30 days after service of the request for admission, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. Thus, a party intending to admit all of a set of requests for admission directed to it, does not have to respond to those requests because its non-response will be deemed an admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

If a party to whom requests for admission are directed does not answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted, and it is irrelevant if the request sought admission of so-called ultimate facts since Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

Any matter admitted under Rule 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

– Affidavits

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

An affidavit which merely sets out conclusions or beliefs of the affiant, but shows no specific factual basis therefor, is inadequate. Ittu v. Charley, 3 FSM R. 188, 193 (Kos. S. Ct. Tr. 1987).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM

v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

An affidavit may be stricken when it does not satisfactorily explain how the affiant has personal knowledge of the facts set forth therein. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 n.8 (Pon. 1996).

In summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. Ueda v. Stephen, 9 FSM R. 195, 197 (Chk. S. Ct. Tr. 1999).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

For a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, and must set forth such facts as would be admissible in evidence. An adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth by affidavit or otherwise, specific facts showing that there is a genuine issue for trial. The facts are viewed in the light most favorable to the nonmovant. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

When defendants' counsel supplied his own opinion that the plaintiff no longer exists based on a review of documents that were prepared by one person and translated by a second person, neither of whom supplied affidavits signifying that the statements were sworn and based on personal knowledge, defendants' counsel's affidavit clearly is not based on his personal knowledge and cannot be considered competent evidence for purposes of opposing plaintiff's summary judgment motion or to support defendants' cross-motion for summary judgment and motion to dismiss. And when the plaintiff submits affidavits of its bankruptcy trustee and its Guam representative, which are based on these individuals' personal knowledge and clearly establish that it was not liquidated, the defendants have not provided competent evidence to make the fact of the plaintiff's corporate status a material dispute, and the defendants' summary judgment motion must be denied. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The act of notarizing a document is in itself a verification of the identity and signature of the person who

signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Even if an affidavit were admitted, the proponents have the burden to come forward with a preponderance of credible evidence to establish the document's veracity because notarization does not conclusively establish the truth of the statements made in the document, but only the identity and signature of the person who signed the document. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The plaintiffs' burden of proof to show the truth of the statements in a notarized affidavit is not met when the purported affiant did not appear in person to have the document notarized and there is no other evidence regarding the circumstances of its signing. Without even testimony to authenticate her signature, let alone the circumstances surrounding her signature, the trial court, as finder of fact, had no way to determine whether the purported affiant fully understood and freely signed the document, or whether she signed it under coercion, mistake, or as a result of fraud, or misunderstanding, let alone whether it was indeed her who signed her name to it. Thus, the affidavit, even if it had been admitted into evidence, would rightly be accorded little weight since significant questions were raised regarding its authenticity, reliability, and veracity. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Under FSM Civil Rule 56(e), supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. The first requisite is that the information the affidavits contain (as opposed to the affidavits themselves) would be admissible at trial. Thus, ex parte affidavits, which are not admissible at trial, are appropriate on a summary-judgment hearing to the extent they contain admissible information. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 193-94 (Pon. 2010).

The function of summary-judgment motion affidavits is not to resolve disputed factual issues but only to determine if any factual issues are in dispute. It is the policy of rule 56(e) to allow the affidavit to contain evidentiary matter, which if the affiant were in court and testified on the stand, would be admissible as part of his testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

There is no requirement that a summary judgment affiant submit to a deposition in order for his affidavit to be properly before the court for the purpose of the summary judgment motion. There is also no requirement that the affiant later testify at trial or his summary judgment affidavit will retroactively be stricken if he is unable to. Therefore affidavits filed in already-decided motions or in a pending motion will not be stricken from the record regardless of whether affiant completes his deposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

Although affidavits are a common form of evidentiary support for factual contentions, no FSM case law requires that evidentiary support take that form in particular and Rule 6, which addresses general issues of timing in motion practice, uses the word "when" in describing situations where a motion is supported or opposed by affidavit. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

An affidavit opposing summary judgment must be made on personal knowledge and when it is not it is not competent evidence and cannot rebut a prima facie showing that the movant is entitled to summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to

create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

An affidavit, not introduced at trial and which the defendants never had the opportunity to address or to cross-examine a witness concerning its contents, will be stricken as evidence since the opposing party cannot properly examine or counter evidence offered after trial and since the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

Just because an affidavit was filed while the court was considering cross motions for summary judgment does not mean that it is automatically admitted into evidence at the later trial. To be evidence that the court can consider, the affidavit should be offered at trial in the usual manner. Then it might be admitted in the usual manner, or it might be objected to and the objection sustained, or the affiant himself might instead be called to testify. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

A statement that is unsigned and not notarized does not constitute an affidavit. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

An affidavit must be made on personal knowledge and when it is not it is not competent evidence. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the FSM, a "declaration under the penalty of perjury" is not the equivalent of an affidavit as it would be in the United States where a statute makes it so. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Since, by its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations and since the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

– Class Actions

Rule 23(b)(2) certification is improper when the case is primarily one for money damages. Rule 23(b)(2) class actions do not extend to cases in which the appropriate final relief relates exclusively or predominately to money damages, but if the predominant purpose of the suit is injunctive the fact that a claim for damages is included does not preclude certification under Rule 23(b)(2). Graham v. FSM, 7 FSM R. 529, 531 (Chk. 1996).

A party invoking Rule 23 has the burden of showing that all four prerequisites – numerosity, commonality, typicality, and adequacy of representation – to utilizing the class action procedure have been satisfied. A class action can then be maintained only if the court finds that questions of law or fact that pertain to the class members predominate over those questions affecting only individual members, and class action is superior to other available methods for fair and efficient adjudication of controversy. Lavides v. Weilbacher, 7 FSM R. 591, 593 (Pon. 1996).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action.

Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

Parties invoking Rule 23 must show that the four prerequisites – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied. A class action may then be maintained only if the court finds that questions of law or fact that pertain to the class members predominate over those questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the case. Saret v. Chuuk, 10 FSM R. 320, 321 (Chk. 2001).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in section (a), and any one of the three subsections in section (b). Thus parties invoking Rule 23 must show that the section (a) prerequisites – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied, and then a subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 (Yap 2003).

A class action is superior to other available methods when no realistic alternative exists. The superiority requirement does not require that all issues be common to all parties, merely that resolution of the common questions affect all or a substantial number of the class members. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action, and will not be overruled absent abuse of discretion. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in section (a), and any one of the three subsections in section (b). People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

Parties invoking Rule 23 must show that all the section (a) requirements – numerosity, commonality, typicality, and adequacy of representation – for a class action have been satisfied. These are prerequisites to certification, and the failure to meet any one of them precludes class certification. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

A Rule 23(b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004).

If the court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the trial court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 n.2 (Yap 2004).

Courts are accorded broad discretion in determining whether a suit should proceed as a class action, and will not be overruled absent abuse of discretion. Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

Should an order defining and certifying a class action later prove inadequate, the order may be altered or amended before the decision on the merits. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 618 (Yap 2004).

If the court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the trial court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 n.1 (Yap 2006).

When the plaintiffs "own" the natural resources through the *tabinaw*, the plaintiffs' exclusive rights to use and exploit the marine resources of the area affected by a grounding and subsequent oil spill give them standing to maintain a class action with respect to the issues at trial – damages to the marine resources from the grounding and oil spill. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

Causation and damages can appropriately be proven on a class basis when the basis for each resident's claim is the same: a shared traditional ownership of the right to use the marine natural resources appertaining to the municipalities of which each is resident and each class member is seeking to recover for a trespass or nuisance injury to their shared use right interest and the type of injury is common to all class members, such as inability to use or consume marine resources from the inner lagoon because of the necessary government ban on these and injury to particular resources because of the grounding and oil spill, *i.e.*, the reef and mangrove areas. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

A class action fee award should not be based solely on a percentage of the recovery, since the court should consider several other factors in order to decide what is an appropriate fee. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three subsections in subsection (b). The failure to meet any one of the prerequisites precludes class certification. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 156-57 (Yap 2007).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

If the trial court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157, 161 (Yap 2007).

Since a *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*, the court can and will redefine the class to include only those residents whose *tabinaw* membership gives them exclusive exploitation or use rights in the affected reef area, regardless of whether the state is the ultimate owner of the reef. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151,

157 (Yap 2007).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of FSM Civil Procedure Rule 23 which is similar to U.S. Federal Rule of Civil Procedure 23, it may look to U.S. sources for guidance in interpreting the rule. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 n.1 (Yap 2007).

An allegation that the named plaintiffs are the three highest chiefs in Weloy is sufficient to allege that they are Weloy residents. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 (Yap 2007).

Since Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action, the court can conditionally certify a class subject to the plaintiffs providing further information about the potential size of the plaintiff class (numerosity) who claim rights in the area of the reef affected by the alleged grounding and on whether the named plaintiffs are adequate class representatives with typical claims or to name new class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

Since each class must have a class representative of its own and must be represented by someone who claims the same injuries as the absent class members, a second class cannot be certified with the same person as class representative as the first class. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 37 (Yap 2008).

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

Under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and the requirements of any one of the three parts in subsection (b). The failure to meet any one of these prerequisites will preclude class certification. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

In a lawsuit for damage to the reef in a Yap municipality, a plaintiff class of all municipal residents is not sufficiently definite when the rights to exploit the reef are vested in only certain *tabinaw* and the *tabinaw*'s members. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38-39 (Yap 2008).

When a trial court decides that the class suggested or described in the complaint does not meet the minimum standards of definiteness, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39, 41 (Yap 2008).

The mere fact that there is someone outside the class who believes that they also have an interest in the damaged marine space would not preclude an award of damages to the class plaintiffs, provided the class could demonstrate that they had such an interest. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

When the plaintiff class was certified to include only those people who "owned" the natural resources and who were unable to use those resources as a result of the oil spill and when the services provided by the chiefs, by contrast, are not a natural resources, much less a resource that is "owned"; when the chiefs are not even compensated for their services; and when no evidence demonstrated that anyone was unable to use the chiefs' services while their attention was purportedly diverted due to the oil spill, the trial court's refusal to issue a separate award of damages to the plaintiff class for the "diverted services" of the Yap chiefs, who were purportedly drawn away from their traditional duties to tend to the maritime mishap, is not error. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 61-62 (App. 2008).

While the lodestar method, which multiples the number of attorney-work hours reasonably expended by an hourly rate appropriate for the FSM and the lawyer's experience, is the proper method in statutory (or

in contractual) fee-shifting cases, the percentage-of-recovery method is generally used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate the counsel responsible for generating the fund, although it is within a trial court's discretion to use the lodestar instead of the percentage-of-recovery method to calculate attorney's fees in a common fund case. When the percentage-of-recovery method is used, the court must specify the percentage it has utilized in determining the fee award. There is no set standard, however, for determining a reasonable percentage. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203-04 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Courts generally use lodestar calculations to "cross-check" percentage-of-recovery fee awards. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The $200 for service of a writ of attachment and levy; the $100 for Yapese translation of the class notices; and the $238.75 for the required publication of legal notice are expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of a class action and are expenses which would have been taxable as Rule 54(d) costs if such costs had been taxed separately. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The $80.50 listed as purchases of beer, bottled water, and the like from a Yap hotel mini-bar; the $2.95 for DVD rental; $34 listed as "no receipts (investigator's beer)" are disallowed since they are not expenses reasonably and appropriately incurred in the prosecution of the class action. The $16.95 listed as breakfast and lunch "no receipts" is disallowed since it is not adequately documented. The $111.91 for groceries purchased in a Guam supermarket is unexplained and therefore disallowed. The $408.80 in charges for internet access from a Yap hotel, even if used for occasional legal research or case-related e-mail, are excessive and therefore disallowed. The $620.50 claim for "expenses in the form of legal research subscription charges, and long distance phone charges" is undocumented and therefore disallowed and "legal research subscription," although since it is undocumented the court cannot be certain, appears that it may properly be part of overhead and not case specific. Also undocumented, and therefore disallowed, is $521.25 in photocopying and postage fees for filing and service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Expenses to travel to the case's venue have usually been allowed as costs when there has been a showing that there were no local attorneys or law firm available. This is a sound principle which should also be followed in awarding class action expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206-07 (Yap 2010).

The moving plaintiffs bear the burden of showing that all the requirements for a class action have been met. Under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three

subsections in subsection (b). The failure to meet any one of these prerequisites precludes class certification. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

Class certification must take place as soon as practicable after the commencement of an action brought as a class action, and the court should make its class determination before turning to the case's merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012).

When certain factual disputes may have some bearing on the matter's ultimate resolution on the merits, but they do not appear to have any bearing on whether the plaintiffs can be certified as a class, the court will disregard these factual disputes for the purpose of the pending class certification motion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

Tabinaw are a salient social feature of the main island of Yap, but may not be in Yap's outer islands or on Eauripik. Thus, the failure to mention *tabinaw* membership in the plaintiffs' proposed class definition may not make the class designation indefinite. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

The court can conditionally find that the typicality and adequacy prerequisites have been met, subject to later evidence that either confirms that or negates that. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

A Rule 23(b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, courts focus on the issue of liability. If the liability issue is common to the class, common questions are held to predominate over individual ones. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

When the liability issue is common to the class because the liability to the plaintiffs is based on the common events related to the grounding of a fishing vessel on the atoll's reef and the subsequent attempted salvage of the vessel, a class action is superior to any other method of adjudication because it is difficult to see how the action could be maintained and adjudicated any way other than as a class action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

Rule 23 is to be liberally construed so that in doubtful cases, a court should decide in favor of a class action, and, if an order defining and certifying a class action later proves inadequate, the court may alter or amend the order before the decision on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

If a later submission affects the accuracy of the class definition, the court has the discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269 (Yap 2012).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient

compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

While the court must first look to FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of FSM Civil Procedure Rule 23 which is similar to U.S. Federal Rule of Civil Procedure 23, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 n.1 (Yap 2013).

– Class Actions – Adequacy

An action brought by the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Because court decisions are mandated to be consistent with the social configuration of Micronesia, persons holding traditional leadership positions have been named representatives in class actions in the State of Yap. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

When no conflicts of interest have been brought to the court's attention and the court has already determined that the named plaintiffs are class members who share the other members' interests in an oil spill case and when any doubts the court would have had concerning counsel's qualifications and resources to vigorously pursue the matter were dispelled by the plaintiffs' counsel's recent association with a certified proctor in admiralty and plaintiff's counsel in other oil spill cases including the well-known *Exxon Valdez* spill, the plaintiffs have satisfied the adequacy of representation prerequisite. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199-200 (Yap 2003).

When all the named representatives are members of one class they cannot be named class representatives of a second class. Certification of the second class must thus be denied. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

When the chiefs have a claim that is not in common with the other class members or a claim within the class claims as the class was certified but is a very different claim, if this claim were permitted, the chiefs would have to pursue it outside the certified class, either as a separate class or individually. Either way, they would then have to be removed as class representatives of, and membership in, the class certified in this action and some other person(s), who could adequately protect the class interests, would then have to be named as class representative(s) and the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 419 (Yap 2006).

Since each class must have a class representative of its own and must be represented by someone who claims the same injuries as the absent class members, and since a class cannot be certified if the same person is the representative of two different classes, the court will consider certifying only one class when all three named plaintiffs are alleged to represent the same class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 156 (Yap 2007).

A disparity in the amount of damages claimed by the class representative and other class members will not defeat certification. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If a named plaintiff is a member of, or chief of any of the one or more *tabinaw* that may claim the allegedly affected reef, that named plaintiff is an adequate class representative and his claims are typical of the class claims, but each named plaintiff must qualify as a class representative on his own merits and does not automatically qualify because another named plaintiff has. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 & n.3 (Yap 2007).

Being a recognized community leader does not prevent a person from being an adequate class representative. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If the chiefs named as plaintiffs are not qualified, some other chief(s) who can satisfy the typicality and adequacy requirement may need to appear as class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Trial is too late for the plaintiffs to prove that the named plaintiffs' ability to be class representatives. Class certification should take place much earlier in the process than that. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

The prerequisite that the named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Since the court may make a class certification order conditional, the court will conditionally find that the named plaintiffs are adequate class representatives with typical claims, subject to the submission of later satisfactory evidence for each named plaintiff or to name new class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

Each named plaintiff must qualify as a class representative on his own merits and will not automatically qualify because another named plaintiff has. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39-40 (Yap 2008).

The prerequisite that a named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

When a named plaintiff is a member of, or a chief of, any of the one or more *tabinaw* that claim rights to the allegedly affected reef, that named plaintiff is an adequate class representative and his claims are typical of the class claims. But if only two named plaintiffs are shown to be *tabinaw* members and there is no averment that a third named plaintiff is a member of an affected *tabinaw*, the third named plaintiff will be dismissed as a named plaintiff unless satisfactory evidence that the third named plaintiff is an adequate class representative with typical class claims is submitted. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

The court is assured that class counsel will vigorously pursue the rights of the class when he has done so in several other maritime tort class actions, and he appears to be otherwise qualified. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

Since court decisions are mandated to be consistent with the social configuration of Micronesia, persons holding traditional leadership positions have been confirmed as adequate named representatives in class actions in Yap, and the court is assured that class counsel will vigorously pursue the rights of the

class when he has done so in several other maritime tort class actions, and he appears to be qualified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

The prerequisite that a named plaintiff will fairly and adequately protect the interests of the class is met when the class representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

If the chiefs named as plaintiff class representatives turn out not to be qualified to represent the class, some other chief(s) will then need to be named as class representatives. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

– Class Actions – Commonality

For a class action to be certified under subsection (b)(3), there must not only be questions of law or fact common to the class, but the court must find that the question of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 197 (Yap 2003).

Both the commonality prerequisite and the predominance requirements for a class action are met when the plaintiffs seeking class certification do not allege any individual personal injuries and all of the damages sought are economic damages, and when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

To meet the predominance requirement, it is not enough that the claims arise out of a common nucleus of operative fact. Instead the common questions must be central to all claims. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 198 (Yap 2003).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, courts focus on the issue of liability. If the liability issue is common to the class, common questions are held to predominate over individual ones. But if there is present a likelihood that significant questions not only of damages but of liability and defenses to liability will arise affecting only individual members of the class in different ways, class action treatment is inappropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

Common issues of law and fact do not predominate for an infliction of emotional distress claim because this cause of action involves personal injury. A claim for infliction of emotional distress cannot be sustained without evidence of physical injury to the plaintiff or of a foreseeable physical manifestation or physical illness resulting from the plaintiffs' mental and emotional distress. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

Causation and damages can appropriately be proven on a class basis when the basis for each person's claim is the same. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When the complaint does not allege that the class as a whole suffered a common physical injury, any compensable emotional distress must be each individual's physical manifestation or illness. Since the basis of each person's claim, and of the defendants' liability for that claim, is different for each class member and evidence of this necessary element for liability on an emotional distress claim would thus be highly individualized and unique to each class member and could only be proven on an individual basis, class certification of infliction of emotional distress claims would not be appropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When each person's individual infliction of emotional distress claim would require a separate mini-trial, no class can be certified for this cause of action and any claims for the personal injury of infliction of emotional distress will have to proceed on an individual basis. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

A subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

For a case to proceed under Rule 23(b)(3), the court must find that the questions in common to the class predominate over those affecting only individual class members. In determining whether the predominance standard is met, the court will focus on the issue of liability, and, if the liability issue is common to the class, common questions will be held to predominate over individual ones, but if there is present a likelihood that significant questions not only of damages but of liability and defenses to liability will arise affecting only individual class members in different ways, class action treatment is inappropriate. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

When the plaintiffs' causes of action all involve economic damages allegedly caused by vessels' negligent anchorage on Anoth village reef on May 22-25, 2006, common questions of law and fact predominate the liability issue. Causation and damages can appropriately be proven on a class basis when the basis for each class member's claim is the same. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 40 (Yap 2008).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

– Class Actions – Notice

The mandatory notice requirements of Civil Rule 23(c)(2) do not apply to Rule 23(b)(1) and (2) actions even though the discretionary notice provisions of 23(d)(2) are applicable. Graham v. FSM, 7 FSM R. 529, 531 (Chk. 1996).

A Rule 23(c)(2) notice may be directed, in both English and Chuukese, to the members of the class as

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort, by being distributed with the FSM paychecks to class members, read on the radio, and posted at various prominent places where class members might reasonably be expected to see them. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

When a plaintiff class has been certified, the best notice practicable under the circumstances must be given defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that A) the court will exclude the member from the class if the member so requests by a specified date; B) the judgment, whether favorable or not, will include all members who do not request exclusion; and C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

When a class has been certified, plaintiffs' counsel shall prepare and have approved as to form by defendants' counsel, a notice, defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that the court will exclude the member from the class if the member so requests by a specified date; that the judgment, whether favorable or not, will include all members who do not request exclusion; and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 619 (Yap 2004).

When a class has been conditionally certified, plaintiffs' counsel shall prepare and have approved as to form by defendants' counsel a notice defining membership in the class, stating that it has been certified as plaintiffs in this action, identifying this action and the court it is in, and advising each member that the court will exclude the member from the class if the member so requests by a specified date; the judgment, whether favorable or not, will include all members who do not request exclusion; and any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The notice shall also include that if any person suffered physical injury or illness because of emotional distress caused by the defendants that person must pursue his or her claim individually and must enter their own appearance. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

The best notice to the class practicable under the circumstances must include at a minimum, but not be limited to, notice by frequent, periodic announcements on the state radio station over a period of two weeks, publication in at least two issues of the local newspaper, the posting of copies in the village meeting place in each and every village in the municipality, and the posting of copies in all public places, such as the courthouse, the post office, and the library, and other places where public notices may be posted. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161 (Yap 2007).

When the court has certified a class, it will order plaintiffs' counsel to prepare and have approved as to form by defendants' counsel a notice stating that a class has been certified as plaintiffs in the action and defining membership in the class, identifying the action and the court it is in, and advising each class member that the court will exclude the member from the class if the member so requests by a specified date; that the judgment, whether favorable or not, will include all members who do not request exclusion; and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The plaintiffs' proposed notice and a proposed order shall require the best notice practicable under the circumstances. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 41 (Yap 2008).

When a class has been certified, plaintiffs' counsel must prepare and have approved as to form by defendants' counsel a notice defining membership in the class, stating that it has been certified as plaintiffs in the action, identifying the action and the court it is in, and advising each member that 1) the court will exclude the member from the class if the member so requests by a specified date; 2) the judgment, whether favorable or not, will include all members who do not request exclusion; and 3) any member who does not request exclusion may, if the member desires, enter an appearance through counsel. The plaintiffs must submit to the court the proposed notice and a proposed order requiring the best notice practicable under the

circumstances and when most class members reside a great distance from the main island, counsel shall include additional methods of notice designed to effect Rule 23(c)(2). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 269-70 (Yap 2012).

– Class Actions – Numerosity

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. Lavides v. Weilbacher, 7 FSM R. 591, 593-94 (Pon. 1996).

While numbers alone are not usually determinative, a very small class may not meet the numerosity requirement for class certification because joinder of all members is practicable. Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

Where joinder of nineteen plaintiffs was already accomplished when plaintiffs instituted suit a later request for certification as a class action will be denied although the plaintiffs later became geographically dispersed. Lavides v. Weilbacher, 7 FSM R. 591, 594 (Pon. 1996).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

When the plaintiff class numbers well over a hundred, some of whom reside on outer islands, it is numerous, and may be certified as a class action. Saret v. Chuuk, 10 FSM R. 320, 322 (Chk. 2001).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157-58 (Yap 2007).

Mere speculation as to the number of parties involved is not sufficient to satisfy Rule 23(a)(1). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 158 (Yap 2007).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable. Practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding the size of classes. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

When a traditional chief's position in the affected municipality and as a member of an affected *tabinaw* ought to give him a reasonable basis upon which to fairly accurately estimate the number of affected individuals and he estimates that approximately 232 municipal residents were affected by the loss to the reef and natural resources, the class is too large for practical joinder and the numerosity requirement is satisfied even though there appears to be little or no geographical dispersion. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

A class action may be maintained only if the class is so numerous that joinder of all members is impracticable, but there are no arbitrary rules regarding the size of classes. This is because practicability of joinder depends on the size of the class, ease of identifying numbers and determining their addresses, facility of making service on members joined and their geographic dispersion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267-68 (Yap 2012).

The numerosity requirement appears to have been met when the class purportedly numbers about a hundred, almost all of whom reside on an outer island, thus making it difficult to identify the number in the class, to determine addresses for service, and to make individual service on each plaintiff on Eauripik and on any plaintiffs sojourning elsewhere. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

– Class Actions – Settlement

Rule 23(e) requires that a class action cannot be settled without the court's approval, and that notice of the proposed settlement must be given to all class members in such manner as the court directs. Rule 23(e)'s provisions are mandatory and serve to invalidate a settlement judgment when absent class members were not notified of the pending approval of the settlement. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

Since a suit maintained as a class action under Rule 23 has res judicata effect on all class members, due process requires that notice of a proposed settlement be given to the class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

A notice must state the terms of the proposed settlement and the options open to the class members. The notice on its face must be scrupulously neutral and emphasize that the court is expressing no opinion on the merits of the case or the amount of the settlement. The notice may consist of a very general description of the proposed settlement, including a summary of the monetary or other benefits that the class would receive and an estimation of attorneys' fees and other expenses. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

Unless a method can be identified that is more reasonably calculated under the circumstances to apprise the interested parties of the class action's pendency and settlement and to afford them an opportunity to present their objections or to opt out, notice will be by publication. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

When it evaluates whether a class action settlement is fair, adequate, and reasonable, the court considers: 1) the complexity, expense and likely duration of the litigation; 2) the reaction of the class to the settlement; 3) the stage of the proceedings and the amount of discovery completed; 4) the risks of establishing liability; 5) the risks of establishing damages; 6) the risks of maintaining the class action through trial; 7) the defendants' ability to withstand a greater judgment; 8) the range of reasonableness of the settlement fund in light of the best possible recovery; and 9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 202 (Yap 2010).

Although the court must first consult FSM sources of law rather than begin with a review of other courts' cases, when the court has not previously construed the extent of its duty under FSM Civil Procedure Rule 23(e) (identical to a U.S. rule) to approve or reject class action settlements and attendant attorneys' fee and expense awards, the court may look to U.S. sources for guidance in interpreting the rule. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 n.1 (Yap 2010).

The approval of a plan of allocation of a class action settlement fund is governed by the same standards of review applicable to the approval of the settlement as a whole: the distribution plan must be fair, reasonable, and adequate, and the court should insure that the interests of counsel and the named plaintiffs are not unjustifiably advanced at the expense of unnamed class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 (Yap 2010).

If a payment to the named plaintiffs comes from the attorney fee award [not the attorney expense award] instead of the rest of the common fund, it would not be subject to intense judicial scrutiny. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203 n.2 (Yap 2010).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The trial court in a class-action settlement is not bound by the parties' agreement as to the amount of attorney fees. A thorough judicial review of fee applications is required in all class action settlements. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

In the context of a class-action settlement, when determining whether plaintiffs' counsel is in fact entitled to fees, and if so, in what amount, the court must be sensitive to the potential conflict of interest between plaintiffs and their counsel, and must be particularly careful to insure that the ultimate division of funds is fair to absent class members. This is because, even if the court finds, under Rule 23(e), that the settlement is fair and reasonable to absent class members, the court still has an unbending duty to ensure that counsel is not unreasonably benefited by the award of an exorbitant fee, and therefore must scrutinize attorney fee applications with a jealous regard for the rights of those who are interested in the class action settlement fund since the divergence in financial incentives always creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees. Thus, under Rule 23(e), a trial court must scrutinize any fee agreement that would be enforced as part of the agreement, because those agreements necessarily put counsel and clients in an adversary relationship. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The court's fee application review must consider not only just compensation for attorneys but also the necessity to protect the rights of the class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

In a common fund case where the attorneys' fees and the clients' award stem from the same source and the fees are based on a percentage amount of the clients' settlement, the trial court should consider: 1) the size of the fund and the number of persons benefitted; 2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the litigation's complexity and duration; 5) the risk of nonpayment; 6) the amount of time plaintiffs' counsel devoted to the case; and 7) the awards in similar cases. These factors need not be applied in a formulaic way since each case is different. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The brevity of the litigation before settlement (for instance, a case in which no formal discovery has been conducted before a quick settlement) would require a reduction in attorney fees. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Generally, a non-settling defendant lacks standing to object to approval of a settlement because the non-settling defendant is not affected by that settlement. Standing exists only where the non-settling defendant can show that it will sustain some formal legal prejudice as a result of the settlement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

The defendants do suffer some formal legal prejudice as a result of a proposed settlement between the class plaintiffs and an intervenor when the class plaintiffs, if the settlement is approved, will bring legal claims against the defendants that the class plaintiffs had not previously been able to assert against them and will seek forms of relief that the class plaintiffs have not been able to assert against the defendants while certain defendants will still face claims brought by the intervenor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

When the class plaintiffs ask the court to approve a settlement between them and the plaintiff-in-intervention; when the class plaintiffs have not pled any claims against the intervenor; when the class plaintiffs have not alleged any causes of action against the intervenor; when the class plaintiffs have not pled a cross-claim against the intervenor; when the class plaintiffs have not prayed for any relief against the intervenor; and when the intervenor is neither a defendant nor a cross-defendant, the court is unable to give a proposed settlement agreement preliminary approval and set a fairness hearing date because the class plaintiffs ask the court to give preliminary approval to a "settlement" between plaintiffs. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

Fairness hearings are required when a claim by a plaintiff class is compromised against one or more defendants so that the court must review the compromise for fairness, adequacy, and reasonableness. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

A motion for preliminary approval of a settlement must be denied when the class plaintiffs seek approval of a compromise of a hypothetical cause of action that they have not pled against a party that is neither a defendant nor a cross-defendant. Because there is no case or dispute for the settlement agreement to settle, the settlement agreement cannot be approved since there is no real settlement to approve or reject and since the court cannot make hypothetical rulings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

The law generally favors and encourages the settlement of class action lawsuits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

When there is no class action lawsuit against the plaintiff in intervention to be compromised or settled, no preliminary approval can be given and no fairness hearing can be held since the class plaintiffs' proposed settlement with the intervenor is not a dismissal or compromise within the meaning of Civil Rule 23(e). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231-32 (Yap 2013).

Even if there were actual class action claims against the FSM by a certified plaintiff class, the court still could not approve a compromise and settlement when the FSM's statutory claims are not claims that are held in common with the claims of the class plaintiffs and the agreement contains unlawful provisions. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

No statute authorizes the Secretary of Transportation and Communications to delegate his statutory duties as Receiver of Wreck to private persons, let alone named and unnamed persons in a plaintiff class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

The court cannot approve any class action settlement agreement that includes an obviously illegal provision. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 233 (Yap 2013).

A court cannot approve only the part of a proposed class action settlement agreement that is not illegal because the court cannot modify the proposed settlement's terms; rather, the court must approve or disapprove of the proposed settlement as a whole. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 233 (Yap 2013).

– Class Actions – Typicality

To satisfy the typicality prerequisite, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

When there are no personal injuries alleged and all claimed economic damages are for subsistence use of the natural marine resources and the difference between the subsistence resources is not so great that common issues would not predominate, the named class representatives, who have subsistence economic interests in the relatively small area similar to other class members' interests, are typical of the class members' interests. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

Each class, or subclass, must have a named class representative(s) of its own. Each class or subclass must be represented by someone who claims the same injuries as the absent class or subclass members, otherwise the typicality requirement is not met and the class or subclass cannot be certified. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 200 (Yap 2003).

To satisfy the typicality prerequisite, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

Each class, or subclass, must have a named class representative(s) of its own. Each class or subclass must be represented by someone who claims the same injuries as the absent class or subclass members, otherwise the typicality requirement is not met and the class or subclass cannot be certified. A person cannot be the named representative of two different classes at the same time. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is inherent in the real party in interest requirement prescribed by Rule 17(a). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

If the chiefs named as plaintiffs are not qualified, some other chief(s) who can satisfy the typicality and adequacy requirement may need to appear as class representative(s). People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is also inherent in the real party in interest requirement prescribed by Civil Procedure Rule 17(a). People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 39 (Yap 2008).

To satisfy the typicality prerequisite, a class representative must be a member of the class and must possess the same interest and suffer the same injury as the class members. This prerequisite is also inherent in the real party in interest requirement found in Civil Procedure Rule 17(a). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 268 (Yap 2012).

– Collateral Estoppel

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim under the doctrine of collateral estoppel or issue preclusion, but in a judgment entered by confession, consent, or default none of the issues is actually litigated. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185 & n.3 (Pon. 1993).

A plaintiff who has previously litigated and lost his claim to a legal interest in a certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of the land because under the principle of collateral estoppel, a cause of action which could have been litigated in the course of the original case between the same parties is treated as litigated and decided with the former cause of action. Nahnken of Nett v. United States (III), 6 FSM R. 508, 516 (Pon. 1994).

Where a party had imputed and actual notice of the dimensions of the land in dispute in a previous litigation the same party cannot later attack the judgment for either vagueness of description or lack of notice. Nahnken of Nett v. United States (III), 6 FSM R. 508, 520 (Pon. 1994).

A party who has litigated an action in his personal capacity cannot escape the application of collateral estoppel and relitigate the action simply by claiming to act in a different capacity. Nahnken of Nett v. United States (III), 6 FSM R. 508, 520 (Pon. 1994).

Courts stand ready to assist litigants with claims that are well-grounded in law and diligently brought. At the same time the courts must strive to ensure that the final judgments fairly rendered are upheld, so that all interested parties may know when an issue has been justly concluded. Parties are entitled to rely on the conclusiveness of prior decisions. Nahnken of Nett v. United States (III), 6 FSM R. 508, 529 (Pon. 1994).

The doctrine of collateral estoppel provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

When dismissal of a related criminal case is without prejudice, there is no judgment on the merits. Therefore the doctrines of res judicata and collateral estoppel, which rely on an underlying final judgment, cannot be applied to the same matters in a civil case. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 164 (Chk. 1995).

When defendants have been granted judgment after trial, a codefendant severed for trial may be granted judgment on the same grounds through the doctrine of issue preclusion (collateral estoppel) or the doctrine of law of the case. Damarlane v. United States, 7 FSM R. 350, 354 (Pon. 1995).

Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudged in the first action. Nahnken of Nett v. United States, 7 FSM R. 581, 587 (App. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM R. 633, 637-38 (Chk. 1996).

Collateral estoppel is an affirmative defense which bars a party from relitigating an issue determined

against that party in an earlier action, even if the second action differs significantly from the first one. This is also referred to as issue preclusion. Defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

When neither res judicata, stare decisis, nor collateral estoppel can apply another judgment to this case, it was error for the trial court to decide this case on that basis. Since the trial court finding that the two cases' facts are the same is clearly erroneous and its following legal conclusion was thus in error, the trial court should instead have made its own findings of fact and conclusions of law before reaching its decision. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

Res judicata and collateral estoppel are closely related doctrines. Under collateral estoppel, a plaintiff who has previously litigated and lost his claim to a legal interest in a certain property is collaterally estopped from claiming damages as a result of loss of ownership or possession of the land because a cause of action which could have been litigated in the course of the original case between the same parties is treated as litigated and decided with the former cause of action. Thus, when the parties, or their predecessors in interest, had at least two opportunities to address the ownership of this land, their issues and claims either were already addressed or could have been addressed in the prior litigation, the doctrine of collateral estoppel would bar the plaintiff from relitigating ownership. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim under the doctrine of collateral estoppel or issue preclusion, but not when a judgment is entered by stipulation or default since none of the issues are actually litigated. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

A prior criminal proceeding operates as an estoppel in a later civil proceeding so long as the question involved was distinctly put in issue and determined. Thus, when an issue is resolved in the government's favor in a criminal prosecution, the defendant may not contest that same issue in a subsequent civil suit brought by the government. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

The collateral estoppel doctrine applies to issues litigated in a criminal case which a party seeks to relitigate in a subsequent civil proceeding. In some instances, the criminal conviction may be a plea agreement: a defendant is precluded from retrying issues necessary to his plea agreement in a later civil suit. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A party who has pled guilty to a crime is collaterally estopped from relitigating elements of that crime in a subsequent civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plea of no contest or nolo contendere, a plea in which an accused does not expressly admit guilt but consents to be punished as if guilty, is insufficient to satisfy the actually litigated requirement and thus cannot be used to apply collateral estoppel or issue preclusion in a later civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 n.3 (Chk. 2014).

The FSM has conclusively established that there are no triable issues of material fact that a defendant had fraudulently converted $24,252.80 when the wrongdoing to which the defendant pled guilty and was convicted involved obtaining the $24,252.80 but the FSM has not established the remaining part of its current claim that the defendant is liable to it for $38,501.76 since that was not was not a question distinctly put at issue and determined in the defendant's prior criminal case so collateral estoppel or issue preclusion cannot be used to establish the defendant's liability for that larger sum. Any wronging involved in obtaining the rest of the $38,501.76 was not what the defendant pled guilty to and thus was not a question distinctly put at issue and determined in that criminal case. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A defendant is collaterally estopped from arguing that the funds converted – the salary overpayments to her – were not national government funds, when that was an element of the offenses to which she pled guilty. That being so, she is precluded from denying that those funds were national government funds. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

A plaintiff cannot use collateral estoppel to obtain summary judgment for an amount that was not a question distinctly put at issue and determined in the defendant's prior criminal case but can obtain partial summary judgment for the amount that was put at issue in the prior case with credit for the amount she had already paid. FSM v. Muty, 19 FSM R. 453, 461-62 (Chk. 2014).

A party who has litigated an action in his personal capacity, cannot escape the application of collateral estoppel and relitigate the action, simply by claiming to act in a different capacity. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

An administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues were hardly novel, but instead were readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Given the adverse outcome in the first action, the plaintiffs cannot escape the application of collateral estoppel, by simply claiming to act on behalf of different heirs or complainants in the subsequent cause of action. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

Collateral estoppel, also called issue preclusion, is a defense that bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.3 (Chk. 2016).

Res judicata and its offspring, collateral estoppel, are not statutory defenses; they are equitable defenses adopted by the courts in furtherance of prompt and efficient administration of the business that comes before them. They are grounded on the theory that one litigant cannot unduly consume the court's time at the other litigants' expense, and that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Collateral estoppel is a judgment's binding effect as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Res judicata actually comprises two doctrines concerning a prior adjudication's preclusive effect. The first is claim preclusion, or true res judicata, which treats a judgment once rendered as the full measure of relief to be accorded between the same parties on the same claim or cause of action. The second, collateral estoppel or issue preclusion, recognizes that suits addressed to particular claims may present issues relevant to suits on other claims. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

In order to effectuate the public policy in favor of minimizing redundant litigation, issue preclusion bars the litigation of issues actually adjudicated, and essential to the judgment, in a prior litigation between the same parties. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Simply put, res judicata applies to claims and collateral estoppel applies to issues. Waguk v. Waguk, 21 FSM R. 60, 69-70 (App. 2016).

Preclusion can rest only on a judgment that is valid, final, and on the merits. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

When an issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

When the judgment on which issue preclusion was said to rest was neither valid, final, nor on the merits, and the factual issues were never actually litigated or determined, issue preclusion cannot be invoked to bar the issue's litigation. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it should not be, and it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

A court's misgivings (against the backdrop of the collateral estoppel doctrine) about a successive civil action are well-founded when, in the successive civil action, the complaint maintains that the certificates of title to a parcel were improperly issued despite having previously acknowledged the parcel's conveyance to a party as a gift. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

– Consolidation

The moving party bears the burden of persuading the court that consolidation of cases is desirable. Etscheit v. Mix, 6 FSM R. 248, 250 (Pon. 1993).

Cases involving a dissolved cooperative association may be consolidated and assigned a new docket number. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

The relief requested in the motion to strike a claim in a complaint on the ground that it is the same as a claim in the amended complaint in different civil action is more appropriately granted through consolidation of both actions because, since the claims are the same, the actions involve a common question of law or fact. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115-16 (Kos. 2001).

The moving party bears the burden of persuading the court that consolidation is appropriate, and the court has broad discretion in determining whether to consolidate cases. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 295 (Pon. 2001).

A motion to consolidate two cases will be denied when little if any commonality of fact or law questions

is evident from the face of the complaints in the two cases and when the motion's general allegations fail to identify a specific common question of law or fact which would make consolidation appropriate. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 295 (Pon. 2001).

Cases may be consolidated when they involve a common question of law or fact. The granting of a motion to consolidate rests with the trial court's broad judicial discretion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 464 (Pon. 2001).

When the one common thread in cases sought to be consolidated is that they share similar general principles of tort law since they all involve an alleged defective product that resulted in injuries, but when the cases involve four different accidents (although two of the suits involve kerosene stove accidents, the stoves were not the same) that occurred at different times over the course of approximately a year, in different places, and involved different victims, the level of factual commonality needed for consolidation is of a higher order than is present. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 464-65 (Pon. 2001).

Cases have been consolidated when they stemmed from a common accident. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 465 (Pon. 2001).

When the fundamental underlying issue in this action and two other actions is the ownership of that land known as "Epinipis," and when in order to determine the rights of the parties (and those not yet parties) the chain of title to "Epinipis" must be determined, it makes no sense to have three separate actions all of which must rely for a determination on one issue – the ownership of the land "Epinipis," therefore the three actions will be consolidated for all purposes. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

In consolidated cases that have become a quiet title action, the proper and indispensable parties to the action include without limitation all persons who the record indicates may claim any intererst, wherever derived, in any portion of the land. Pastor v. Ngusun, 11 FSM R. 281, 286 (Chk. S. Ct. Tr. 2002).

A major purpose for granting consolidation of judgments is to establish the payment priority for the consolidated judgments and to implement an orderly payment plan involving one, instead of multiple, orders in aid of judgments. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

When cases have been consolidated and a party to the consolidated case, files a "third party complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

The court may consolidate a civil action with another civil action where one civil action seeks a

declaratory judgment that an agency has exceeded its rule-making authority when it promulgated the regulations that lie at the base of the claims in the other civil action, which seeks to enjoin the enforcement of those regulations, since it will serve judicial economy to address all these related issues in one case. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 570 (Pon. 2007).

It is the Chief Justice's responsibility to make the orderly assignment of cases. When no justice had taken any action in Civil Actions No. 36-2000 and 229-2000 before they were consolidated with Civil Action No. 64-98 and the three cases all involved title to Unupuku and the same parties, consolidation was appropriate under Civil Procedure Rule 42(a). Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Consolidation of cases involving the same land is desirable to avoid the possibility of inconsistent decisions, to expedite the ultimate resolution of the matter, and to avoid expensive and unnecessary duplication. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Since once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices, and that while the case is pending, the priority extends to any other case involving the same parties and issues, it was proper to consolidate the three cases concerning ownership of Unupuku with the first case filed, and have the justice assigned to that case handle the consolidated case. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

A request to consolidate cases should be made by written motion stating with particularity the grounds for relief and the relief or order sought. Failure to do so is considered a waiver of the motion. Doone v. Simina, 16 FSM R. 487, 489 (Chk. S. Ct. Tr. 2009).

The court may consolidate actions involving a common question of law or fact. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

A motion for consolidation will be granted when common questions of law and fact are involved in both civil matters, when it is in the interest of judicial economy and efficiency, when it will avoid unnecessary costs or delay, and when there is no opposition. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

The court will deny a motion to consolidate because an argument that a case must be consolidated with another so that the court can order the FSM Secretary of Human Resources to order the appropriate relief is a specious, spurious, and mendacious when the Secretary is not a defendant in either case and the plaintiffs' grievances against the defendants are based in state law, related to but independent of the claims in other case. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing. Perman v. Ehsa, 18 FSM R. 432, 435 n.1 (Pon. 2012).

Since the grant of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court will review the trial court's denial of consolidation on an abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

Although a person must be joined as a party if in the person's absence complete relief cannot be accorded among those already parties, the trial court did not abuse its discretion by refusing to consolidate the case with another when the court can accord complete relief between the parties in the case without consolidation with another case because the plaintiffs' allegations set out facts, which, if proven, state causes of action for the common law torts of nuisance and trespass against the two operators of a private business plus a common law breach of contract claim and none of the defendants in the other case are parties in this case and other than the FSM national police holding a party one night, the plaintiffs' claims in the other case are otherwise unrelated to the claims in this case. Damarlane v. Damarlane, 19 FSM R. 97,

106 (App. 2013).

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court reviews the trial court's denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Although a person must be joined as a party if in the person's absence complete relief cannot be accorded among those already parties, consolidation will be denied when complete relief between the parties in both cases can be afforded between the parties in those cases without consolidation. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

The trial court's denial of the motion to consolidate was not an abuse of discretion when the trial court could easily resolve the issues between the plaintiffs and the national government without the need to join the private business operators on the berm against whom they (along with one additional plaintiff) have very different claims and when the trial court can also resolve the claims in the other case without consolidation with this case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that would also have jurisdiction, but when the court has already ordered that the two cases be consolidated, the issue has become moot. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The purpose of possessing the power to consolidate cases is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 391 (App. 2016).

When the court has consolidated actions involving a common question of law or fact, it may use its power to make such orders concerning proceedings therein to rearrange parties, and thus their claims, where the consolidated cases had different, and adverse, plaintiffs. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

– Declaratory Relief

The power to issue declaratory judgments is within the judicial power vested in the FSM Supreme Court by article XI, section 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of article XI, section 6(b). Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 400 (Pon. 1984).

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM R. 416, 418-19 (Pon. 1988).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

A party may seek declaratory relief from the Chuuk State Supreme Court even though it may have another available remedy, but there must be an actual controversy between the parties and the matter must be within the court's jurisdiction. The court has discretion to entertain such actions if appropriate. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 339, 342 (Chk. S. Ct. Tr. 1995).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

The test whether the court has jurisdiction to hear a declaratory judgment against the national government is whether there is a case or dispute within the meaning of article XI, section 6(b). Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Declaratory relief is inappropriate when the plaintiff has already succeeded in procuring permanent injunctive relief based on the nonexistence of any genuine issue of any material fact involving deprivation of the plaintiff's constitutional rights and violation of statute and the settled principle of res judicata. In this regard, declaratory relief would be redundant. Bank of Guam v. O'Sonis, 8 FSM R. 301, 306 (Chk. 1998).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

Further declaratory relief may not be appropriate when the plaintiff has already obtained by stipulation a judgment for the taxes, interest, and penalties sought in the complaint. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When the plaintiff seeks declaratory relief, the court has jurisdiction to issue a declaratory judgment so long as there is a case or dispute within the meaning of Chuuk Constitution, article VII, §§ 3 and 4. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When a party is asserting a breach of contract counterclaim, it has standing to seek a declaration from the court of its rights under the contract. If the determination of the rights of others is necessary to determine the party's rights and obligations, then the party may seek a court declaration of the contract's terms as those affect the party. The party, however, cannot seek a determination of matters that do not affect it. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution. Additionally, the granting of a declaratory judgment rests in the trial court's sound discretion exercised in the public interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

Although the court must first look to FSM sources of law, rather than foreign authorities, when an FSM court has not previously construed an aspect of FSM Civil Procedure Rule 57, which governs declaratory judgments and which is similar to U.S. Federal Rule of Civil Procedure 57, it may consult U.S. sources for guidance in interpreting the rule. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 n.22 (Pon. 2011).

When none of the four states, the entities that would normally assert third-party beneficiary status, are parties to the action; when the contract itself is plain and unambiguous; and when all of the issues in the declaratory judgment request are also before the court in the parties' direct actions, the court sees no need for a declaratory judgment on whether the four states are third-party beneficiaries of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Generally, the court avoids unnecessary constitutional adjudication. Thus, when the court has resolved the underlying administrative appeal without the need to address the constitutionality of Pohnpei's tax statute, any declaratory relief as to the tax statute's constitutionality would be inappropriate. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

Since the court may, upon the filing of an appropriate pleading, declare the right and other legal relations of any interested party seeking such declaration, a declaratory judgment is available only upon the filing of an appropriate pleading and not a motion which is distinguished in the rules from a pleading. Berman v. Pohnpei, 18 FSM R. 67, 70 (Pon. 2011).

The power to issue declaratory judgments is within the FSM Supreme Court's judicial power pursuant to FSM Const. art. XI, § 1, and the court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a case within the meaning of FSM Const. art. XI, § 6(b). Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

In a case of actual controversy within its jurisdiction, the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration will have the force and effect of a final judgment or decree and be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. Panuelo v. FSM, 20 FSM R. 62, 66 n.4 (Pon. 2015).

Because no one shall report to work nor receive a salary unless that person has been previously certified on an appropriate eligible list by the Personnel Officer or his authorized representative, and selected by a Department or agency head, an applicant is not entitled to declaratory relief that he should be hired when, although he was placed on the eligible list, the Secretary, as the result of interviews, found, in writing, no one was available or acceptable and the Personnel Officer did not find the Secretary's reasons inadequate and return the list. Panuelo v. FSM, 20 FSM R. 62, 67-68 (Pon. 2015).

The court will consider a motion for emergency declaratory relief filed without an appropriate pleading under the requirements of a summary judgment motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 348

(Pon. 2016).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies. The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

The grant of a declaratory judgment, like other forms of equitable relief, rests in the trial court's sound discretion exercised in the public interest. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Declaratory judgment is the least intrusive judicial remedy. Usually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance. Notably, under the arbitrary and capricious standard, as required by the Public Service System Act, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

When the plaintiff has in good faith requested the resumption of the administrative process and the agency has verbally denied that request, the court may grant relief to the extent that the plaintiff requests declaratory relief requiring the administrative proceedings' resumption, but to the extent that the plaintiff has requested further declaratory relief regarding the validity of her termination, or the legality of a settlement offer, the court cannot grant that relief because that determination is within the administrative agency's exclusive jurisdiction and it is inappropriate for the court to unnecessarily encroach on the administrative domain. Eperiam v. FSM, 20 FSM R. 351, 356-57 (Pon. 2016).

The court will grant partial declaratory relief requiring the resumption of the administrative proceedings, and will dismiss the plaintiff's petition with all counterclaims until the administrative remedies have been exhausted. If the plaintiff is not satisfied following the administrative proceedings' final decision, she may refile a petition in the court with new pleadings that reflect the administrative deficiency, but the court cannot grant further declaratory relief, and no common law causes of action can be heard. Eperiam v. FSM, 20 FSM R. 351, 357 (Pon. 2016).

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

– Default and Default Judgments

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. Lonno v. Trust Territory (III), 1 FSM R. 279, 281 (Kos. 1983).

A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

In the interest of the finality of legal proceedings, the court will not set aside a default judgment in a case in which the defendant had access to legal advice yet failed to make a timely defense of the case and presented no meritorious defense, although the plaintiff could not be prejudiced if the default judgment were set aside. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 440, 444 (Truk 1988).

Where the defendant had satisfied a default judgment and the judgment was later set aside, the court will order the amount received by the plaintiff paid into an account under the control of the court pending final disposition of the case on the merits, where it appears that the plaintiff's health and place of residence are uncertain, and where the passage of time renders the plaintiff's ability to produce the amount more uncertain, should the outcome of the case require this. Morris v. Truk, 3 FSM R. 454, 458 (Truk 1988).

Under circumstances where the defendant has failed to set forth a meritorious defense and has

exhibited culpable conduct, defendant will not succeed on a motion to set aside a judgment of default. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 514 (Truk 1988).

A motion to set aside a default judgment is addressed to the discretion of the court. In the exercise of discretion the court is guided by the principle that cases should normally be decided after trials on the merits. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

The criteria to be met in order to justify the setting aside of a default judgment are whether the default was willful, caused by culpable conduct of the defendant, whether there is meritorious defense, and whether setting aside the default would prejudice the plaintiff. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. Poll v. Paul, 6 FSM R. 324, 325 (Pon. 1994).

An improperly filed amended complaint cannot serve as the basis for a default judgment. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

There is no obstacle to the removal of a defaulted case so long as it is done within the time limit set by the General Court Order 1992-2. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

Although removal after a default judgment is proper if done within time, it cannot be taken to supersede the default judgment which must be regarded as valid until set aside. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466-67 (Chk. 1998).

In the Chuuk State Supreme Court, a hearing for judgment after a default is entered that is held to allow the plaintiff to present to the court further evidence to establish the plaintiff's right to a claim or relief, includes the court's determination of whether the action was brought within the limitation period provided by law. Sipia v. Chuuk, 8 FSM R. 557, 558, 560 (Chk. S. Ct. Tr. 1998).

No judgment by default shall be entered against the State of Chuuk or an officer or agency thereof in the Chuuk State Supreme Court unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

A plaintiff's uncontroverted testimony coupled with the defendant's failure to offer testimony or evidence of any fact, may leave a court with no alternative but to grant the plaintiff's petition for a judgment. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

If, in order to enable the court to enter a default judgment, it is necessary to determine the amount of damages by evidence the court may conduct such evidentiary hearings as it deems necessary and proper. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 25 (Yap 1999).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

Although failure to make proof of service does not affect the validity of the service, it does mean that the clerk cannot enter a default because before a clerk will enter a default against a defendant, the record must show that that defendant was properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk.

2001).

A court must be assured that it has acquired personal jurisdiction over a defendant before it enters a default against him, and a court does not have personal jurisdiction over a defendant unless or until he has been properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

Courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Because default judgments will be vacated under proper circumstances so that cases can be decided on their merits, and because when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed a few days late must be much stronger. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Serving an answer three days late, and filing it four days late is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits because public policy favors court judgments be on the merits. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

When there was no default entered separate from the default judgment itself and when the complaint seeks general damages requiring a hearing under Rule 55(b), a default judgment should not have been entered and will be vacated and the court will proceed on the basis that no party was in default. Amayo v. MJ Co., 10 FSM R. 244, 249 n.1 (Pon. 2001).

No default can be entered against a party which has either filed a response indicating its intent to defend the action or engaged in other behavior which constitutes an active defense. Customarily, a party expresses its intent to defend by filing a motion or an answer to the complaint, but it is not uncommon for an unrepresented party to respond by mailing a letter to the court, and the court's practice has long been to recognize such submissions as an expression of a party's intent to defend, thereby preventing entry of default. Whether a party's written response or other behavior satisfies the Rule 55 requirement that the party must "plead or otherwise defend" to prevent entry of default is made on a case by case basis. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A default judgment may only be entered against a party following entry of that party's default. Where no default has been entered, no judgment by default is available. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Default proceedings protect diligent parties from delay and uncertainty caused by unresponsive parties. O'Sullivan v. Panuelo, 10 FSM R. 257, 261, 262 (Pon. 2001).

A default ensures that litigants who are vigorously pursuing their cases are not hindered by those who are not, in an environment of limited judicial resources. O'Sullivan v. Panuelo, 10 FSM R. 257, 261 (Pon. 2001).

Whether a default judgment should be entered will be considered only if any defendant is in default and it is appropriate to enter default against that defendant. O'Sullivan v. Panuelo, 10 FSM R. 257, 261 (Pon. 2001).

No default judgments will be entered against defendants who have timely filed their answer to the plaintiff's amended complaint or against a defendant who had actively defended his position against the earlier complaint, against whom no default had been entered by the clerk, and whose answer was filed late, but before the motion for default judgment was filed. O'Sullivan v. Panuelo, 10 FSM R. 257, 261 (Pon. 2001).

A default and default judgment will not be entered against a defendant who, although he did not respond to plaintiff's amended complaint, has been active in his defense and who in his answer to the original complaint asserted defenses to each factual allegation in the first amended complaint, which complaint varies only slightly from the original and in a way that is not material the to claims for relief against him. O'Sullivan v. Panuelo, 10 FSM R. 257, 261-62 (Pon. 2001).

When a defendant has adequately defended against the complaint so as to prevent the entry of default, and considering the liberal standard for setting aside a default judgment, and recognizing the court's desire to permit matters to proceed on their merits, a defendant's opposition to a motion for a default judgment for failure to respond to an amended complaint will be taken as a request for leave of court to file an answer to plaintiff's first amended complaint and the defendant will be directed to file a responsive pleading. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

When none of the defendants appeared on the day set for trial on damages, the defendants were in default under Rule 55(a), and the trial could then proceed as a hearing under Rule 55(b)(2) to determine plaintiffs' damages. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Whether to grant a motion for entry of default judgment is discretionary with the court, and not a matter of right. In making this determination, the court may consider a variety of factors including the merits of the plaintiff's substantive claim. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

If the court grants a motion for default judgment at the commencement of trial, then, when the plaintiffs are seeking general damages and not a sum certain under Rule 55(b)(1), the next step would be for plaintiffs to prove up their damages under Rule 55(b)(2). Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

In a default situation, the court may conduct such hearings as it deems necessary and proper in order to determine damages. But when the nature of plaintiffs' claims is substantial, it may be appropriate for the court to consider the merits of those claims as part of that hearing, which can be accomplished when the plaintiffs go forward with their proof on both liability and damages. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that fact is made to appear by affidavit or otherwise, the clerk shall enter that party's default, but when the plaintiff did not seek a default, no default is entered. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

Under proper circumstances, default judgments will be vacated so that cases can be decided on their merits and when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger. Logically, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed late must be much stronger. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

Having to prosecute a case when the defendants filed and served their answer only days late, is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits. Public policy favors court judgments be on the merits. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

When no default has already been entered against a defendant and that defendant has filed a late response clearly indicating an intention to defend against the plaintiff's claim, the court, in the interest of deciding the case on the merits, will not enter a default against that defendant. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439 (Pon. 2001).

When a court has denied the plaintiffs' motion to strike defendants' responsive filings, and also denied the plaintiffs' motion to enter defaults, the court cannot enter a judgment by default against the defendants. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 440 (Pon. 2001).

When service of process has been made outside the territorial jurisdiction of the FSM Supreme Court (that is, outside of the FSM), no default shall be entered until the expiration of at least 30 days after service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Default, under Rule 55, is typically granted when a defendant has failed to answer or respond to a complaint within the prescribed time limit. A default judgment under Rule 55 will not be granted for the plaintiff's failure to timely respond to a summary judgment motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

When there was no entry of default, there could not have been any hearing on a request for a default judgment. Entry of a default judgment is a two step process, requiring the entry of default before a default judgment can be entered. Hartman v. Chuuk, 12 FSM R. 388, 393 n.7 (Chk. S. Ct. Tr. 2004).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When the plaintiff served a corrected summons and complaint were served on the defendant on June 3, 2004 and the defendant filed his answer on July 14, 2004, the defendant's contention that the error in the plaintiff's original May 7, 2004 summons (erroneously citing Chuuk instead of Pohnpei as the place to file an answer) caused him to be confused about how and when to respond to the plaintiff's complaint and his

contention that the defendant was not in default because he had 30 days, not 20 to answer, offer no possible basis on which the court can find good cause to relieve him from a default entered by the clerk on June 24, 2004. Boston Agrex, Inc. v. Helgenberger, 12 FSM R. 611, 612-13 (Pon. 2004).

In a default judgment, the plaintiff cannot be awarded a $2,500 loan fee because it is the subject of a separate promissory note between the plaintiff and the defendants, which the plaintiff did not allege in his complaint. As a result, it cannot serve as a basis for relief in this litigation. The same is true of the $4,269.52 in interest on that note that the plaintiff seeks to include in the judgment. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

When a party against whom judgment by default is sought has appeared in the action, that party must be served with written notice of the application for judgment at least three days prior to the hearing on such application. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

When a defendant's sole action in the case was to file a paper that did not respond in any way to the original complaint, but disagreed with factual assertions in a co-defendant's motion to dismiss and when he is a defendant against whom a judgment for affirmative relief is sought, he is in default since he has failed to plead or otherwise defend because the comment on the co-defendant's motion did not constitute a pleading or a defense as otherwise provided by the civil procedure rules as it was not an answer to the plaintiff's complaint (the only type of pleading the defendant could make) or a defense provided by the rules. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

When prejudgment interest is mentioned nowhere in the body of the complaint and is not prayed for in the demand for judgment at the end of the complaint, the court has no choice but to refuse to enter a default judgment that includes prejudgment interest. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Although FSM's notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims, these procedures are neither available nor utilized in obtaining a default judgment when the defendant has never appeared. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Civil Rule 54(c)'s clear command is that a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. This is in contrast to a case decided on the merits where every final judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277-78 (Chk. 2005).

A complaint's prayer for "such other and further relief as may be deemed just and proper" cannot serve to incorporate an unpled prejudgment interest claim and circumvent Rule 54(c)'s clear command that a default judgment must not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A court, in entering a default judgment, cannot take a blind leap of faith that a defendant would know, or should know, that the lawsuit was also seeking unpled prejudgment interest. Likewise, a defendant, in deciding whether to defend a case filed against him or to do nothing and let a default judgment be entered against him, ought to be able to rely on the demand for judgment prayed for in the complaint and the complaint's contents to determine what his liability will be if a default judgment is entered. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A default judgment that included damages for claims not raised in the complaint or sums not prayed for by the plaintiff and that was rendered against a defendant who never appeared would violate due process. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

The standard for analyzing whether relief from a default judgment is warranted is whether the default was willful, that is, caused by the defendant's culpable conduct, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff, so when a plaintiff does not want the opportunity to contest a claim or assert a meritorious defense to a claim but wants to add a claim, the inapplicability of this standard to the case highlights the novelty of what the plaintiff is trying to do. No cases support the claim that Rule 60(b) relief is available for a prevailing plaintiff to be granted relief from a default judgment in its favor when the defendant had not appeared in the case prior to the default judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A defendant who has been served with a complaint and summons has twenty days after service to serve an answer or otherwise defend under Rule 12. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

Attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

When a default judgment is sought against a party that has appeared in the action, that party must be served with written notice of the application for default judgment at least three days before a hearing on the application. When the motion for a default judgment was served by mail on both the defendant and its counsel of record, the requisite notice was given. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553 (Chk. 2005).

When the clerk has entered a default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right. If the court determines that the defendant is in default, the complaint's factual allegations, except those relating to the amount of damages, will be taken as true. It is not always necessary to present testimony on the liability issue, although liability is not deemed established simply because of default and the court, in its discretion, may require proof of facts that must be established in order to determine liability. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553-54 (Chk. 2005).

When the court has not previously construed some aspects of Rule 55(b)(2), an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 554 n.1 (Chk. 2005).

A default judgment's determination of damages may require the court to interpret a contract's terms. Interpretations of contract terms are matters of law to be determined by the court. Pohl v. Chuuk Public

Utility Corp., 13 FSM R. 550, 554 (Chk. 2005).

When the complaint did not plead that the defendant knew that its allegations were false, or that they were made with malice, or that they were made with a reckless disregard of the truth, and even taking the facts as pled in the complaint as true, the facts alleged are insufficient as a matter of law for the court to find the defendant liable for libel under the higher public figure standard, especially when the communications appear to be privileged. Liability for libel is not deemed established merely because the defendant defaulted. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

Courts ordinarily favor resolving cases on their merits rather than on procedural grounds. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

Once the court clerk has entered a default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The requesting party is not entitled to a default judgment as of right. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

When a court determines that a defendant is in default, the complaint's factual allegations, except those relating to the amount of damages, will be taken as true, but liability is not deemed established simply because of the default. The court therefore must consider each of the items sought as damages before determining the amount of damages for which the defaulting defendants will be held liable. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224-25 (Chk. 2008).

Since 18% per annum is not a usurious rate of interest under FSM law, the defaulting defendants will be liable for this item of damages when the defaulting defendants agreed, by their agent's signature on the invoices, to pay this rate on overdue accounts. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right. George v. Albert, 17 FSM R. 25, 31-32 (App. 2010).

If a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. Although liability is not deemed established simply because of the default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When, even if a default had been entered, an evidentiary hearing, such as the damages "trial" that was held would still have been required since the factual allegations relating to the amount of damages are not taken as true, any error in calling it a trial instead of a damages hearing, was harmless error. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

The thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b) is the applicable time frame in an admialty case. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 83 & n.2 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Under the FSM Rules of Civil Procedure, a default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and a default judgment may

be entered by the clerk or the court if certain requirements are met. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

A default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In that instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights. The default judgment remedy serves as such a protection. Furthermore, the possibility of a default is a deterrent to those parties who choose delay as part of their litigative strategy. Narruhn v. Chuuk, 17 FSM R. 289, 299 n.3 (App. 2010).

In entering a default judgment, the court's power is used to enter and enforce judgments regardless of the merits of the case, purely as a penalty for delays in filing or other procedural error. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

An entry of default simply requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

FSM law does not favor the entry of default judgments; courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b). People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs' complaint, the plaintiffs' requests for entries of default will be denied, and since no default will be entered, the plaintiffs' motion for a default judgment must also be denied. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479-80 (Yap 2011).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

No default can be entered against a party which has either filed a response indicating its intent to defend the action or engaged in other behavior which constitutes an active defense. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

If a party against whom judgment by default is sought has appeared in the action, that party must be served with written notice of the application for judgment so when a renewed motion for entry of default judgment was not served on a party who had undisputedly appeared in the action or served on his former counsel, the motion for a default judgment against him will be denied without prejudice for lack of service of the motion on him. Mori v. Hasiguchi, 17 FSM R. 630, 643-44 (Chk. 2011).

While a default judgment is not an adjudication on the merits of a claim, it is a final judgment with res judicata and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

When the mortgage foreclosure portion of the action is being dismissed without prejudice pursuant to the mortgage's forum selection clause and when that dismissal leaves no other cause of action against a co-mortgagor, the court will deem it advisable to deny the plaintiff's motion for a default judgment against the co-mortgagor, and, since there is no cause of action left against the co-mortgagor, he must also be dismissed as a defendant. The bank's motion is therefore be denied as moot. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 95 (Yap 2011).

Since a defendant must receive notice of all claims for relief on which the court might find him liable and enter judgment against him, a default judgment that was rendered against a defendant who never appeared and that included damages for claims not raised in the complaint served on him or sums not prayed for by the plaintiff would violate due process. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

If the class plaintiffs wish to obtain a judgment against a defendant based on the second amended complaint they must effect service of process of that complaint on him, but if they are content to obtain a default judgment against him based on the first amended complaint, they will not be required to serve the second amended complaint on him. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted because when the relationship between the parties requires vicarious liability, finding one defendant liable and the others not liable would be an inconsistent judgment. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 417 (Yap 2012).

Even if a default judgment could be entered against just the defaulting defendant instead of included in a later judgment with all defendants, damages should not be established, or any evidence taken on damages, against the defaulting defendant until the other defendants' liability has been determined in order to avoid the possibility of inconsistent damage awards. As there would be no damages amount, there would be no Rule 54(b) language directing its entry as a final judgment. This would leave the "default judgment" subject to revision at any time before the entry of a final judgment adjudicating all the claims and the rights and liabilities of all the parties. This "default judgment" would be an interlocutory order that is neither enforceable nor appealable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 417 (Yap 2012).

A defendant who is in default may participate in a damages hearing if necessary and proper to determine the amount of damages. FSM Civil Procedure Rule 55(b)(2) gives the court that discretion because it provides that if, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. Lee v. FSM, 18 FSM R. 558, 560-61 (Pon. 2013).

When defendant contests the amount of the claim, a full hearing may be required on the issue of damages, since a default does not concede the amount demanded. This proceeding is the same as any other trial except that it is limited to the question of damages. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

A default judgment entered after a damages hearing cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

A default judgment cannot be entered against the FSM unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. Rule 55(e) does not bar default judgments against the FSM in all circumstances, it only bars them when the claimant has not established his or her claim by evidence satisfactory to the court. The satisfactory or substantial evidence needed under Rule 55(e) does

not have to rise to the same level needed in other cases against the FSM. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

After an entry of default against the FSM government, the quantum and quality of evidence that might satisfy a court can be less than that normally required. Lee v. FSM, 18 FSM R. 558, 561 (Pon. 2013).

In a default judgment damages hearing against the FSM, it may seem necessary and proper that the court conduct a damages hearing at which the plaintiffs' affidavits and documents may be used but also at which the FSM will have the opportunity to present testimony and other evidence to refute the amount of the plaintiffs' damage claims because, in this case, it is impractical for each of the plaintiffs to appear in person and they should not be required to do so when the FSM has defaulted and the plaintiffs have travel costs from their homes in the mid-western United States that are disproportionate to their claimed possible recovery. Lee v. FSM, 18 FSM R. 558, 561-62 (Pon. 2013).

Since FSM civil procedure rules discourage litigation by ambush, the court may order the parties, if they have not already done so, to provide the other side with the documentary evidence that side intends to use at the default judgment damages hearing and a list of the witnesses, if any, which they intend to call along with a short summary of each witness's anticipated testimony. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

The defendant's assertion that it cannot be held liable unless there is an apportionment of fault between it and the non-party driver of its vehicle does not seem to be a meritorious defense because that driver is not a party and a trial on the merits would only determine if the defendant were itself liable. Lee v. FSM, 18 FSM R. 631, 633-34 (Pon. 2013).

While it is uncertain how willful the original default was, the defendant's later lack of diligence was willful when it asked for 30 days' enlargement to file an answer but did not, at any time within that 30 days, prepare and file an answer or prepare and file a motion to vacate the default and file its proposed answer with it and when it did not move for a further enlargement or attempt to do anything in the following months so the court finally denied the motion to enlarge over four months later. Lee v. FSM, 18 FSM R. 631, 634 (Pon. 2013).

Although a defendant has defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Lee v. FSM, 19 FSM R. 80, 82-83 (Pon. 2013).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. This principle guards against inconsistent judgments when the relationship between the parties requires joint and several liability. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

Past precedent holds that a judgment by default shall not be different in kind from that prayed for in the demand for judgment. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

The court will accept the material allegations against a defaulting defendant as true, but the factual allegations relating to the amount of damages will not be accepted as true. The court thus must consider each of the items sought as damages before determining the amount of damages for which the defaulting defendant will be held liable. Damarlane v. Damarlane, 19 FSM R. 519, 523 (Pon. 2014).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

Although liability is not deemed established simply because of a default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. Thus, although a defendant has defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

When Pohnpei did not plead a salvage cause of action under Title 19, either specifically, or in the facts it alleged, it cannot recover any salvage damages in a default judgment because a judgment by default cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

Government expenses as a result of a ship grounding are not a cost of litigation and when they were neither plead as a cause of action nor prayed for as relief, these expenses are not recoverable either as costs or as damages in a default judgment since a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

The res judicata doctrine stands for the proposition that a judgment entered in a cause of action conclusively settles that cause of action as to all matters which were or might have been litigated and adjudged therein, and a default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A default judgment is not different in kind from and does not exceed in amount that prayed for in the complaint's demand for judgment when the demand for judgment clearly asked for a money judgment against each defendant in amount of the unpaid notes and a default judgment was entered for a money judgment in that amount and when the prayer for relief made reference to the causes of action in the complaint's body in which it pled the defendants' personal liability since the plaintiff did not have to repeat the theory of liability in its demand for judgment. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

The *res judicata* doctrine stands for the proposition that a judgment entered in a case conclusively settles that cause of action, as to all matters that were brought or could have been litigated and adjudged therein. A default judgment constitutes a final judgment with *res judicata* and claim preclusion effect. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true, but liability is not deemed established simply because of a default. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

In evaluating a motion for a default judgment, the court accepts as true all well-pled facts in the complaint but must reach its own legal conclusions. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

While the factual allegations in a complaint, except those as to damages, are treated as conceded by

the defendant for purposes of a default judgment, legal issues remain subject to the court's adjudication. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Even after default, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

The entry of a co-party's default is not likely to alter the outcome of the plaintiff's case against the co-parties because when a default is entered against a party whose liability would be joint and several with a co-party, the court will generally not enter a default judgment against that party until the case against the co-party has been resolved and then a default judgment (or dismissal) consistent with the judgment against (or dismissal for) the joint and several co-party can be entered simultaneously. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575-76 (Pon. 2016).

The res judicata doctrine stands for the proposition, that a judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and adjudged therein. A default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Perman, 21 FSM R. 31, 40-41 (Pon. 2016).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

– Default and Default Judgments – Entry of Default

An entry of default requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim except as may be required to establish damages. Primo v. Refalopei, 7 FSM R. 423, 427 (Pon. 1996).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from the liability thus established. Primo v. Refalopei, 7 FSM R. 423, 428 (Pon. 1996).

Where the defendant is outside the FSM, no default can be entered until the expiration of at least 30 days after service. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.3 (Kos. 2000).

A court may find service upon a foreign government sufficient when the plaintiff sent it the complaint and summons by registered mail and the foreign government had actual notice of the complaint, since it filed a motion to dismiss, but the court will deny an entry of default when the plaintiffs cannot offer a formal proof of service, such as registered mail return receipt, because they cannot confirm service on the foreign government before it filed its motion to dismiss. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

Failure by a plaintiff to meet deadlines set out in an order may result in dismissal under Civil Procedure Rule 41(b), while a similar failure by a defendant may be met with an entry of default under Civil Procedure Rule 55(a). Kosrae v. Worswick, 9 FSM R. 536, 540 (Kos. 2000).

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by the rules and that fact is made to appear by affidavit or otherwise, the clerk must enter that party's default. The term "default" simply means the defendant has failed to plead or otherwise

defend within the time required by the rules. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A motion is not required prior to entry of default. However, entry of default does not occur automatically. The entry of default must be requested and the request must be accompanied by proof of default demonstrating the defendant "has failed to plead or otherwise defend." When the fact of default is established by "affidavit or otherwise" the court clerk is required to enter it. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

A default judgment may only be entered against a party following entry of that party's default. Where no default has been entered, no judgment by default is available. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

If service in Guam was all that a plaintiff had to rely upon, then the entry of default and the default judgment 25 days after service was made on Guam, would have been premature, but when service of process has been made within the FSM as well, a default may be entered after twenty days have elapsed after service and the defendant has not answered or otherwise defended. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

An entry of default may be sought by request. No motion is necessary for entry of default, whereas a motion is necessary for entry of a judgment by default. Hartman v. Chuuk, 12 FSM R. 388, 393 n.6 (Chk. S. Ct. Tr. 2004).

A motion for entry of default will be denied when there is insufficient proof of service of notice of the complaint. George v. Albert, 15 FSM R. 323, 325 (Kos. S. Ct. Tr. 2007).

Kosrae Civil Rule 55(b)(2) provides that a party is entitled to at least three days written notice before a hearing on a motion for default. An entry of default will be denied when the plaintiff had six months in which to make the motion but waited until discovery had been completed and it was the day before trial; when both parties had already participated in discovery and were prepared to proceed with trial and had submitted pre-trial briefs and subpoenaed witnesses; and since, if, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence, the court may conduct such hearings as it deems necessary even if a default judgment had been granted, a hearing would have been necessary to determine the amount of damages and that hearing would have produced the same evidence and the same outcome as the trial. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing the defendant's pleadings or motions even if filed outside the times prescribed by the rules. No default can be entered against a party which has either filed a response, such as a motion or an answer to the complaint, indicating its intent to defend the action, or engaged in other behavior which constitutes an active defense. Whether a party's written response or other behavior satisfies the Rule 55 requirement that the party must "plead or otherwise defend" to prevent entry of default is made on a case by case basis. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from any liability thus established. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

An entry of default simply requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

An entry of default is similar to a finding of liability but it is not a final judgment. The entry of default does not relieve plaintiffs of their burden of proving the damages that flowed from any liability thus established. Lee v. FSM, 18 FSM R. 558, 560 (Pon. 2013).

When a defendant who has been properly served has not appeared and answered or otherwise defended within the allotted time and the plaintiff has made that fact to appear to the court clerk, the clerk must, right then, enter the default. The plaintiff does not have to serve a copy of that request on the defendant because the defendant has by then failed to appear or otherwise defend and therefore has no grounds on which to oppose the plaintiff's request. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

When the summons served with the complaint had warned the defendant that if it did not appear or defend within twenty days of service of the complaint a default judgment could be taken against it, that constitutes the notice to the defendant and the defendant's opportunity to respond that is required by due process of law, and because the defendant had its chance to appear but did not, the defendant is not entitled to a second notice and warning that since it has not answered or otherwise defended, the plaintiff is now going to get an entry of default and a default judgment. That notice has already been given and the opportunity to be heard has been afforded and has passed. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Before entering a default, the clerk must examine the affidavits filed and find that they meet Rule 55(a)'s requirements. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

A request for entry of default must be supported by affidavit because while the clerk will know when the summons and complaint were served on the defendant (assuming that a return of service was filed), the clerk will not know if the answer was served on the plaintiff within the 20-day period provided for in Rule 12. This, of course, is because plaintiff's attorney will know whether he has been served with a copy of a defendant's answer or not. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

The plaintiff must establish the fact of default by evidence, and this evidence can take the form of an affidavit showing the time and service of the summons and complaint, and averring that an answer was not served within the allowed time. The practice seems generally to make a request, supported by affidavit, and the burden of preparing an affidavit appears minimal. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 (Pon. 2013).

Since an entry of default is similar to a finding of liability but it is not a final judgment, an entry of default does not relieve a plaintiff of its burden of proving the damages that flowed from any liability thus established. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

– Default and Default Judgments – Entry of Default – Setting Aside

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109,

112-13 (Pon. 1993).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

Generally, "good cause" is a broader and more liberal standard that frees the court from some of the restraints imposed by the excusable neglect requirement. A motion for relief pursuant to Rule 55(c) must be liberally construed. The Rule 55(c) standard is lenient. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

In determining whether good cause to vacate an entry of default exists a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine into such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

For the purpose of a Rule 55 motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met although a court finds a defendant's meritorious defense argument tenuous. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378-79 (Chk. 2000).

Because default judgments will be vacated under proper circumstances so that cases can be decided on their merits, and because when only a default has been entered, the policy in favor of vacating the default and deciding the case on its merits is even stronger, the policy in favor of deciding a case on its merits when no default has been entered and the answer merely filed a few days late must be much stronger. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

An entry of default may be vacated when the defendant relied on the representation of another defendant's employee that it would handle his defense in the case, and that after he learned that this was not so he obtained his own counsel who then filed the motion to vacate the entry of default. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

For good cause shown, the court may set aside an entry of default. When, even though the defendant's counsel has not sought to explain why she failed to request an enlargement of time and her failure to ask either opposing counsel or the court for an enlargement of time to answer was not excusable, the standard to be applied when determining whether to set aside an entry of default suggests that the defendants should not be penalized for the inexcusable neglect of their attorney where giving sufficient time to the defendants will provide necessary information to assist the court in a complicated case involving hundreds of thousands of dollars, and when the plaintiff has not opposed the request, the court will set aside an entry of default. Individual Assurance Co. v. Iriarte, 12 FSM R. 215, 216 (Pon. 2003).

Since the standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b), the court will find good cause to set aside entry of default based on the defendants' demonstrated intent to defend in the action by their filing numerous motions, including their first motion for an enlargement, filed a day after the deadline for filing an answer to the complaint and before entry of default and their motion to set aside entry of default filed almost immediately after the default was entered. K&I Enterprises v. Francis, 15 FSM R. 414, 417 (Chk. S. Ct. Tr. 2007).

When the defendants' default was entered before they filed their answer and when the default was not subsequently set aside under Civil Procedure Rule 55(c), the court cannot take cognizance of the later-filed answer. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented, and the court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

For the purpose of a Rule 55 motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met although a court finds a defendant's meritorious defense argument tenuous. But while the meritorious defense factor has a low threshold of adequacy in a motion to vacate a default, that threshold is not non-existent. Some meritorious defense must be asserted. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

In order to vacate an entry of default, the defendant must show good cause – a liberal and less rigorous standard under Rule 55(c) rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). In determining whether good cause to vacate an entry of default exists a court evaluates 1) whether the default was willful, 2) whether setting it aside would prejudice the adversary, and 3) whether a meritorious defense is presented. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Setting aside a default would prejudice the plaintiffs when a witness who made a key admission that goes to the issue of liability, a core issue which the defense seeks to contest on the merits, has, in the four years since the default was entered, passed away; when, although the plaintiffs may be able to obtain similar evidence by other difficult means, would not have the benefit of his testimony; when, if the defendant had not defaulted, the plaintiffs could have deposed this witness in order to preserve his testimony, but by defaulting, this deposition became superfluous and unnecessary; and when because of the passage of the four years, only one of the six expatriate plaintiffs is currently in the FSM, thus making it difficult and burdensome for the plaintiffs to present their case at a trial on the merits when it would not have been three years earlier. This prejudice to the plaintiffs alone is sufficient to deny vacating the default. Lee v. FSM, 18 FSM R. 631, 633 (Pon. 2013).

Rule 55(c) governs the setting aside of a default, but when a default judgment was already entered, FSM Civil Rule 60 applies. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.1 (Pon. 2013).

Since the standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion, the standard of review for a relief from an entry of default logically should also be abuse of discretion. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive excusable neglect standard used for setting aside a default judgment under Rule 60(b). "Good cause" is a broader and more liberal standard that frees the court from some of the restraints imposed by the excusable neglect requirement. Damarlane v. Damarlane, 19 FSM R. 97, 104-05 (App. 2013).

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented and the court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

For the purpose of a Rule 55(c) motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met even though a court finds a defendant's meritorious defense argument tenuous. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

When, since the plaintiffs' claims were not for a sum certain, the clerk very properly did not enter a default judgment against either defendant and since only an entry of default was in place, the trial court properly used the lenient good cause standard to consider and grant the motion to set aside the entry of default because the movant did present tenuous but meritorious defenses and because his default was not willful and the five-month delay did not prejudice the plaintiffs. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

When, upon receiving the complaint, the defendant visited an attorney for assistance and that attorney told the defendant that he was not admitted to practice in the FSM Supreme Court, and that he would seek other assistance to represent her; when, based on this advice, the defendant left Pohnpei, only to return a few years later to find that she was in default; and when her motion to set aside the default is unopposed, the defendant has met the good cause standard to set aside the entry of default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

An application under Rule 55(c) to set aside a default entry or judgment is addressed to the court's sound discretion, and the judge's determination normally will not be disturbed on appeal unless the appellate court finds an abuse of discretion or concludes that the judge was clearly wrong. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 307-08 (Pon. 2016).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment, but, although good cause is a mutable standard, varying from situation to situation, and is likewise a liberal one, it is not so elastic as to be devoid of substance. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

When the motion to set aside the default was not brought until nearly two and a half years after default was entered, and when the movant's arguments do not address the length of delay in filing the motion to set aside but argue that another defendant failed to protect its interest, the court finds that the default was willful. The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

A motion to set aside an entry of default will be denied when the motion was not brought until nearly two and a half years after the default was entered; when, although if the motion to set aside had filed at an early stage of the lawsuit the prejudice to the plaintiff would have been minimal, granting the motion now would be prejudicial to the plaintiff because the plaintiff has actively litigated the matter for nearly three years; when the defendant does not assert a meritorious defense in its motion; and when, after a prior court order addressed the default, it was seven months before the motion to set aside was filed. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308-09 (Pon. 2016).

When the defendants would have been in default only for their failure to file an answer, not from a failure to ever appear (since they had earlier filed a motion to dismiss), service on them of a request for an entry of default was required, and when it was not made, the default that was entered can be set aside on this ground alone. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

In determining whether good cause to set aside an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

When the motion to set aside was prompt, when the default does not appear to be willful, when the plaintiffs, in their opposition, do not argue that setting aside the default would prejudice them, and when, although the defendants failed to assert a meritorious defense in their motion, they did assert affirmative defenses in their answer that would meet that requirement, the defendants' motion to set aside may be granted. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

– Default and Default Judgments – Sum Certain

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. Poll v. Paul, 6 FSM R. 324, 325 (Pon. 1994).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

A court clerk cannot enter a default judgment for a sum certain when no affidavit of the amount due, as required by Rule 55(b)(1), was attached to the default judgment request. A court clerk also cannot enter a default judgment when the defendant appeared in the case and participated in discovery and motions and his default would thus not be for failure to appear but for failure to properly file his responsive pleading because, by its terms, Rule 55(b)(1), only applies if the defendant has been defaulted for failure to appear. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

Any claim including attorney's fees is not one for a sum certain. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

When the complete ledger sheets and the open account agreement were not attached to the amended complaint, even just the principal and interest would not constitute a sum certain or liquidated damages. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

A claim for prejudgment interest, when it lies within the court's discretion because it is not specifically provided for in the parties' prior agreement (as it would be in a bank loan), is not a claim for a sum certain, for which the clerk could enter a default judgment. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

In the Rule 55 context, a claim is not a sum certain unless there is no doubt as to the amount to which a plaintiff is entitled as a result of the defendant's default. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

The Rule 55(b)(1) term "sum certain" contemplates a situation in which, once liability has been established, there can be no doubt as to the amount due, as in actions on money judgments and negotiable instruments, or similar actions where damages can be determined without resort to extrinsic proof. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Merely requesting a specific amount in the complaint or statement of damages does not fulfill the sum certain requirement. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Courts are clear that a claim is not for a "sum certain" merely because the demand in the complaint is for a specific dollar amount. A contrary holding would permit almost any unliquidated amount to be transformed into a claim for a sum certain simply by placing a monetary figure on the item of claimed damage, even though that amount was not fixed, settled, or agreed upon by the parties and regardless of the nature of the claim. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

The term "sum certain" contemplates a situation where the amount due cannot be reasonably disputed, is settled with respect to amount, ascertained and agreed upon by the parties, or fixed by operation of law. A claim is not for a "sum certain" merely because the claim is stated as a specific dollar amount in a complaint, verified complaint, or affidavit. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

As with a "sum certain," a hearing is not normally required if the claim is "liquidated." The term "sum certain" has been held to have a meaning similar to "liquidated amount." "Liquidated" means adjusted, certain, settled with respect to amount, fixed. A claim is liquidated when the amount thereof has been ascertained and agreed upon by the parties or fixed by operation of law. George v. Albert, 17 FSM R. 25, 31 (App. 2010).

Whether the damages sought in a default judgment constitute a sum certain is a matter of law which is reviewed de novo. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

A claim is not for a "sum certain" merely because the claim is stated as a specific dollar amount in a complaint, verified complaint, or affidavit. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The Rule 55(b)(1) term "sum certain" contemplates a situation in which, once liability has been established, there can be no doubt as to the amount due, as in actions on money judgments and negotiable instruments, or similar actions where damages can be determined without resort to extrinsic proof, that is, it contemplates a situation where the amount due cannot be reasonably disputed, is settled with respect to amount, and is either ascertained and agreed upon by the parties or fixed by operation of law. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

When the asserted damages were not agreed upon by the parties or fixed by operation of law and when they can reasonably be disputed, not only in amount but also whether any of these "estimated costs" are for items that could properly be used as a measure of damages in the case, the clerk had no power to enter a default judgment since there was no sum certain. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

– Depositions

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. Morris v. Truk, 3 FSM R. 454, 456-57 (Truk 1988).

Where plaintiff initially appeared for deposition and thereafter missed several continued dates within a two week time span because of funerals at which he was required to officiate, the failure to appear on the rescheduled dates was substantially justified so as to make sanctions under FSM Civil Rule 37(d) inappropriate. Nahnken of Nett v. United States (II), 6 FSM R. 417, 419-20 (Pon. 1994).

Ordinarily the court will not grant motions for protective orders to substitute interrogatories for depositions in view of the recognized value and effectiveness of oral over written examinations. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

A defendant is entitled to examine a plaintiff in the jurisdiction where the plaintiff has chosen to file the lawsuit. A court may grant an exception to the rule requiring plaintiffs to submit to depositions in the jurisdiction where the suit is pending when a plaintiff makes a good faith application based on hardship. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 488 (Pon. 1994).

Leave of court is required to depose a party within 30 days of service of summons and complaint on that party. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 292 (Pon. 1995).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

The deposition of a corporation generally must be held where its corporate offices are. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 629 (Chk. 1996).

Objection to the qualification of the officer before whom the deposition is taken is waived unless made beforehand, or as soon thereafter as possible. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

If objections in manner of taking deposition are not made so that they may be promptly cured, the

objection is waived. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

Where it would be unjust to sanction defendants whose whereabouts are unknown when what might have been discovered had their depositions gone forward was limited to information concerning insurance coverage, which could have been obtained by cheaper and simpler forms of discovery, the court will issue a protective order that the defendants need not appear for deposition, but that the document production request relating to insurance policies be honored. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A party may in the party's notice and in a subpoena name as the deponent a governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. This procedure should be distinguished from the situation in which a party wants to take the deposition of a particular individual associated with a governmental agency. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

Once a deposition notice is served under Rule 30(b)(6), it is the duty of the governmental agency to name one or more persons who consent to testify on its behalf and these persons must testify as to matters known or reasonably available to the agency. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

A protective order will be granted preventing the deposition of defendants' counsel and his production of documents when there are other means by which the information can be obtained, when the information does not appear to be as relevant and necessary as suggested, and when the information involves counsel's opinions in a work he co-authored 25 years before. The plaintiff's need for the information is outweighed by the hardship on defendants, who would be forced to confront the possibility of obtaining different counsel at a late stage of the litigation. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

Deposition costs will be allowed when the transcription was done and the deposition was admitted into evidence at trial even though the documentation for the deposition charge was a check made payable to an attorney in the Philippines, and noted as such on the check stub. Amayo v. MJ Co., 10 FSM R. 371, 385-86 (Pon. 2001).

Any party may serve upon any other party written interrogatories to be answered by the party served. Depositions may be taken of any person but interrogatories are limited to parties. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

The Rule 31 procedure for depositions upon written questions is that a copy of the questions is delivered to the court reporter who then takes the deposition in accordance with Rule 30(c), (e), and (f). Written cross, redirect, and recross questions are thereafter propounded within the time provided by the rule. While a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used. All things considered, depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

Generally, the designated representative of a party who is not a natural person, and parties who are natural persons, may attend depositions. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 512 (Pon. 2002).

In the case of corporations, partnerships, associations, or governmental agencies, the organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to testify at depositions on its behalf. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 512-13 (Pon. 2002).

When one party has agreed to accept a personal representative for the larger question of deposing a sole proprietor party, it has also accepted him for the secondary purpose of attending other depositions as a representative where the sole proprietor would otherwise be entitled to be present. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 (Pon. 2002).

Depositions upon written questions under Rule 31 are an alternative to oral depositions. The Civil Procedure Rules contemplate that either an oral or written deposition will be taken, and not both. A party therefore waived its right to propound written deposition questions to another party at the same time it waived its right to take her oral deposition, but if information is sought, other discovery methods are available under the Rules. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 n.3 (Pon. 2002).

If parties intend to continue a deposition at a later time, the deposition transcript itself will so indicate. In the absence of such clear direction, the deposition is complete at its conclusion. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 514 (Pon. 2002).

Unless it appears that the witness's absence was procured by the party offering the deposition, a deposition of a witness, whether or not a party, may be used by any party for any purpose, if the court finds that the witness is off of the island at which the trial or hearing is being held. AHPW, Inc. v. FSM, 12 FSM R. 544, 557 (Pon. 2004).

Since Rule 32(a) provides that a deposition or part thereof may be used at trial so far as admissible under the evidence rules against any party who was present or represented at the deposition's taking or who had reasonable notice thereof; when the defendant was personally served with a notice of the plaintiff's deposition and he did not object in any way to the deposition being taken in the Philippines and he did not attend the deposition, he had reasonable notice of the deposition. Further, Rule 32(a)(3) provides that the deposition of a witness, whether or not a party, may be used for any purpose if the court finds that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment. Whether circumstances exist such that a plaintiff's deposition may be used at trial in lieu of live testimony is to be made at the time of trial, and not months beforehand. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

When the plaintiff suffers from paraplegia and that that condition is ongoing, and when, although the court would have preferred the treating physician's opinion that he was unable to travel, it is also undeniable that paraplegia is a serious ongoing medical condition, the plaintiff meets the illness/infirmity provision of Rule 32(a)(3) so that his deposition may be used at trial in lieu of live testimony. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

A deposition may be used for any purpose if the witness is off of the island at which the trial or hearing is being held, unless it appears that the absence of the witness was procured by the party offering the deposition. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

A party may use his or her own deposition at a trial. When a party is seeking to use his or her own deposition at trial, the court may consider all the circumstances relating to the party's absence to determine whether the deposition may be used. Amayo v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

When the plaintiff is off of the island (Pohnpei) where the trial is being held and is in the Philippines where he resides, the fact that he resides there does not mean that he has "procured" his own absence from the place of the trial in the sense contemplated by Rule 32. Since the plaintiff was referred to the Philippines for medical care shortly after his injury preventing him from continuing to work in Pohnpei, the fact that he is absent from Pohnpei under these conditions supports the admission of his deposition at the re-trial, subject to any of the evidentiary objections that would obtain if he were testifying in person. Amayo

v. MJ Co., 13 FSM R. 242, 246 (Pon. 2005).

When, during discovery that preceded the first trial, the defendant had the opportunity to take the plaintiff's deposition but did not; when he did not propound any other discovery; when he did not object when plaintiff's counsel noticed plaintiff's deposition in the Philippines and did not attend that deposition; when he did not comply fully with the plaintiff's discovery requests and the court ordered him to comply, but he did not and was subject to a $495.50 sanction; when, after the case was remanded for a new trial, the court set terms and conditions for conducting discovery, the first of which was that he pay the outstanding $495.50 discovery sanction before undertaking any further discovery, but it was not paid until five months after the discovery cutoff date; and when, by a motion filed twenty-six days before the re-trial was scheduled, the defendant sought leave to take the plaintiff's deposition, the defendant's motion to exclude the plaintiff's deposition from being offered at trial will be denied. Amayo v. MJ Co., 13 FSM R. 242, 246-47 (Pon. 2005).

Civil Rule 32(a)(3) permits any party to use a witness's deposition for any purpose if the court finds that the witness is off of the island at which the trial or hearing is being held, unless it appears that the witness's absence was procured by the party offering the deposition. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

If objections in the manner of taking deposition, including disqualification of the officer taking the deposition, are not made so that they may be promptly cured, the objection is waived. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

A mere assertion that a potential deponent lacks knowledge is not a ground for granting a protective order. The party seeking discovery is not required to establish that the person whose deposition it seeks has information about which he or she could testify at trial. Indeed one important purpose of discovery is to ascertain who has such information. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Age and ill health is often a ground to take a deposition in order to preserve testimony for trial in case the witness is unavailable at that time. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

It would be an extraordinary case where examination of other witnesses would take the place of the examination of a party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

Deposition costs will be allowed when the transcribed deposition was admitted into evidence at trial. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the

president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

Unless manifest injustice would result, the court will require that the party seeking discovery pay the opposing party's expert a reasonable fee for time spent in responding to discovery. Since the time spent cannot be known with certainty until after it has been spent, Rule 26(b)(4)(C) contemplates that, as a matter of general practice, payment will not be tendered to the opposing party's expert witness until after the discovery deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party deposing the opposing party's expert witness is not required to pay expert fees for the deponent's time in advance of the deposition, absent an agreement to do so, and no rule permits a party to terminate a deposition for the failure to pay expert witness fees in advance. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Since an expert witness deponent's refusal to continue his deposition without advance payment was unjustified and contrary to the rules, the court will order that the deponent resume his deposition, and the party deposing him may notice his deposition. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 651 (Pon. 2009).

A sanction award imposed on a deponent may be setoff against the expert fees owed him after his deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

Leave of court to take a deposition is required only if it is taken before 30 days after the complaint and summons were served on a defendant. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 67 (Yap 2010).

Any party seeking to depose any person upon oral examination must give reasonable notice in writing to every other party to the action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 67 (Yap 2010).

When defense counsel's office is in Greater Manila, Philippines, written notice given defense counsel on August 21, 2009, for a deposition in Yap on August 25, 2009, is not the "reasonable notice" required by Rule 30(a) and will be quashed since this was not enough advance notice for defense counsel to prepare for the deposition, make travel arrangements, and arrive in Yap, thousands of miles away on the opposite side of the Philippine Sea and where, given the flight schedules, he might not have been able to get to in time for the scheduled deposition. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, the plaintiffs were entitled to depose the tug's captain as he was a witness with relevant information and since pretrial depositions are an expected and normal part of pretrial discovery. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Ordinarily, the court will not grant motions for protective orders to substitute written interrogatories for oral depositions in view of the recognized value and effectiveness of oral over written examinations. While

a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used since depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Written depositions are used primarily to obtain routine information that is not in substantial dispute or in suits where the amount involved is small. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

When none of the factors listed in FSM Civil Rule 26(c) for granting a protective order – i.e. "annoyance, embarrassment, oppression, or undue burden or expense" – are present, the court will deny a request that a deposition be taken by means of written, instead of oral, questions. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

The defendants' insistence that a witness not be deposed without a court order is completely unjustified when the defendants give no colorable ground for their position. The court will accordingly grant the plaintiffs' motion to compel the deposition and encourage the parties to agree on a date and time for it that is mutually convenient but, if the parties are unable to agree on an earlier date and time, the oral deposition will start at on a court-set date. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68-69 (Yap 2010).

When the court does not find that the defendants' opposition to the plaintiffs' motion to compel a deposition was substantially justified and it has not been shown that other circumstances make an expenses award unjust, the court must order the defendants to pay the plaintiffs' reasonable attorney fees in obtaining the order. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

When counsel supported the deponent in his unreasonable demands, did not advise the deponent that his demands were unjustified, and did advise the deponent that he could leave the deposition, in effect, advising the deponent not to answer, this advice (to leave – to not testify) was not substantially justified. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

A party needs to finish deposing the opposing party's witness far enough ahead of trial so that it would have a fair opportunity to meet that witness's expected expert opinion testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The President, even as a private litigant, is not an ordinary person. He must be granted some accommodation while at the same time balancing that accommodation with the adverse parties' right to discovery from a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

When the deposition subpoena of the President, as a private civil plaintiff, has been quashed only to the extent that the deposition date is vacated, the parties' counsel shall confer to agree on a date and time when it is expected that the plaintiff President will be able to devote several hours to being deposed. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

Rule 30(b)(1), requires that "reasonable notice" be provided to any witness served with a subpoena. Also, the court may quash or modify the subpoena if it is unreasonable and oppressive. There is no fixed

rule as to what constitutes reasonable notice, and in every case individual circumstances must be taken into account. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

The general rule is that without a showing of special need for haste, less than two days' notice of a deposition is unreasonable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

One of the purposes of the two days rule is to give the parties the opportunity to effectively prepare in order to cross-examine the deponent. Significantly, this two-day rule is for full working days and does not include weekends or holidays because it is not reasonable to expect counsel to work on weekends unless a special need for haste is shown. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

In some circumstances when exigent circumstances are shown, less than one day's notice is not per se unreasonable. This often occurs in pending maritime cases, when deponents will be unavailable because they are about to leave on a voyage at sea and unlikely to return to the jurisdiction. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

When the typical exigent circumstances in maritime cases – that the deponents would be unavailable if not immediately deposed – were not shown and when an attempt to acquire information in the criminal proceeding must be made in that case, and not by using the discovery process in the parallel civil proceeding, the reason for haste did not justify deviating from the two-day rule and the less than half a working day's notice given was not reasonable notice. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

It is common to stay the depositions in a civil case when the criminal case is pending and both proceedings involve essentially the same parties and conduct. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

When civil depositions would trigger a variety of procedural prejudices; when the defendants cannot use the more lenient rules of civil procedure to depose the witnesses before the criminal case; when the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination; and when the depositions will likely not be needed following the criminal hearing and thus potentially a duplicative waste of judicial resources, there is good cause to stay the depositions until after the criminal probable cause hearing, but a full stay is not warranted. Due to the vessel's significant value and business losses that are occurring in the civil matter, the substantial prejudice to the defendants outweighs granting a complete stay in the civil action until the criminal case's conclusion. In the interest of justice and judicial economy, the court will exercise procedural flexibility to stay only those matters, such as depositions, that would cause conflicts with the criminal proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

When the parties were not given reasonable notice for the depositions, those depositions will be quashed. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

It is appropriate to depose another party's attorney only when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it has been shown that no other means exist to obtain the information, and that the information sought is crucial to the case's preparation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

An assertion that the pleadings and discovery responses contain sufficient information is not a valid

ground for a party to avoid being deposed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

A party has the right to depose opposing parties to learn the extent of their knowledge. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It would be an extraordinary case where other sources of information would take the place of deposing a party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

Pretrial depositions are an expected and normal part of pretrial discovery. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

A party's illness does not preclude taking her deposition. Rather than being a reason not to take a deposition, ill health is often a ground to take a deposition in order to preserve testimony for trial in case the witness is unavailable at that time. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Under FSM Evidence Rule 601, every person is competent to testify, and, if challenged on the basis of impairment, the general rule is that competency is presumed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Generally, a party is entitled to its expenses in bringing a motion to compel depositions if the motion is granted. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Only in the rarest of cases would a party not be subject to a deposition at another party's request. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

Age or ill health are grounds to take a deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

By trying to take a party's deposition, the parties can reach an informed opinion about that party's competence to testify. Whether she is physically or mentally incapable of testifying is a factual, not a legal, question which can be resolved by taking her deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

– Derivative Actions

A case that is not a suit by the corporations' shareholders or members to compel the corporations' directors to perform their legal obligations in the supervision of the organization is not a derivative action. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A shareholder's derivative action is one to enforce a corporation's right when the corporation has failed to enforce a right which it may properly assert. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Shareholder derivative actions have pleading requirements beyond those in Civil Rule 8(a) since under Rule 23.1, the special derivative action pleading requirements include allegations about the special prerequisites for such actions. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A complaint in a shareholder action must be verified, and must include statements to the effect that the plaintiff was shareholder at the time of the transaction of which he complains or that his shares thereafter devolved on him by operation of law, that the action is not a collusive one to confer jurisdiction, and that he has undertaken efforts to have his grievances redressed by the corporation's directors or shareholders and the reasons why he failed to obtain that relief. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

If a derivative action plaintiff has not undertaken action to have his grievances redressed then he must allege the reasons for not making the effort. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A plaintiff in a derivative action must fairly and adequately represent the interests of the shareholders similarly situated in enforcing the corporation's right. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Since a plaintiff shareholder is presumed to be an adequate representative and since the burden is on the defendant to show that the plaintiff is inadequate, the plaintiff in a derivative action does not need to allege he is an adequate representative. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action plaintiff must allege that, at the time of the transactions complained of, he owned shares in the corporation or that the shares thereafter devolved on him by the operation of law. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action complaint, or the part of the complaint that alleges a derivative action, must be verified, that is, confirmed or substantiated by oath or affidavit whereby the truth of the statements in the complaint is sworn to. Mori v. Hasiguchi, 17 FSM R. 630, 639 & n.2 (Chk. 2011).

The purpose of Rule 23.1's verification requirement is to ensure that the court will not be used for "strike suits" and that the plaintiff has investigated the charges and found them to be of substance. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify the complaint in a shareholders' derivative action is a technical defect that can be cured by amendment. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

If a derivative action complaint lacks the proper allegation that it is not a collusive action it is subject to dismissal although a reasonable opportunity to amend should be permitted. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must allege with particularity what efforts the plaintiff has made to obtain relief from the corporation's directors. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v.

Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

The Rule 23.1 requirement that stockholders first address their grievance to corporate authority serves numerous practical purposes, such as forcing shareholders to exhaust their intracorporate remedies; permitting the corporation to pursue alternative remedies; permitting the termination of meritless actions designed to vex or harass the corporation; permitting the corporation, with superior knowledge and financial resources, to assume control of the suit; and avoiding unnecessary judicial involvement in the organization's internal affairs. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

In a derivative action, it must appear from the complaint that plaintiff acted in good faith in seeking corporate action and exercised diligence in exhausting his remedies within the corporation. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A derivative action must be dismissed when a plaintiff has not demanded action by the corporation's directors unless the court finds that Rule 23.1's demand requirements are excused under the rule's alternative provision that the plaintiff explain his reasons for not making the effort. Courts have allowed recourse to this reasons "for not making the effort" clause when a demand would be futile, useless, unavailing, or an idle ceremony. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

As is true of pleading demand and refusal, what must be shown in the complaint to justify excusing compliance with the demand requirement is a matter of judicial discretion. At a minimum, the plaintiff must plead facts explaining the lack of a demand – it is not enough for plaintiff to state in conclusory terms that he made no demand because it would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

– Discovery

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

While a defendant's motion to strike portions of a complaint as immaterial or impertinent is untimely if not filed before the defendant's answer a court, in its discretion, may still consider it because the court may, on its own initiative at any time, order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 406 (Pon. 1994).

A trial judge has considerable discretion on the question of relevancy of discovery materials and his order should not be disturbed unless there has been an abuse of discretion or unless the action taken is improvident and affects the substantial rights of the parties. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 489 (Pon. 1994).

Under FSM Civil Rule 26 evidence may be discovered even if it would inadmissible on relevancy grounds at trial, as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. However, the discovery of material to be used for impeachment purposes is generally not permissible unless the impeaching material is also relevant or material to the issues in the case. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 490 (Pon. 1994).

Parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence, but a plan may be implemented to minimize the burden of producing a large number of documents. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 (Pon. 1996).

Under FSM Civil Rule 26, parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Any party may serve upon any other party written interrogatories to be answered by the party served. There is no requirement that two parties be directly adverse in order for one to seek discovery against another. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Generally, discovery should be permitted under Rule 26 when the information sought is relevant to the claim or defense of the party seeking discovery, or to the claim or defense of any other party. Discovery should be allowed under the "relevancy" standard set forth in Rule 26 unless it is clear that the information sought can have no possible bearing upon the subject matter of the action. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

The fashioning of remedies and sanctions for failure of a party to comply with discovery requirements is a matter within the trial court's discretion. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290 (Pon. 1998).

Under Rule 37(b), if a party fails to obey an order to permit or provide discovery, a court may order, among other things, that facts be designated as admitted, that the disobedient party not be allowed to support or oppose designated claims, that pleadings or parts thereof be stricken, or that a party be held in contempt of court. In addition, or in lieu of any of these, the court shall require a disobedient party, or the party's attorney or trial counselor, or both, to pay reasonable expenses (including attorney's fees) caused by the disobedient party's failure to obey the court's order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290-91 (Pon. 1998).

Instead of ordering that certain facts be designated as admitted as requested by a party that had previously obtained a court order requiring another party to comply with its discovery requests, a court may order that for failure to comply with that discovery order that the disobedient party pay all of the moving party's reasonable expenses in preparing, filing, and defending its motions for sanctions. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 476 (Pon. 1998).

A question, taken literally, that calls for information on any kerosene related incident involving damage

to property or injury to persons occurring anywhere in the world throughout the existence of three corporate defendants is on its face, a request so broad that it clearly exceeds the scope of permissible discovery. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

The court may allow a supplemental discovery response to be amended to obtain a declarant's signature on the response. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 153 (Pon. 1999).

When a court's purpose in re-opening discovery on the limited subject of insurance coverage was to give the parties some perspective on whether continued prosecution of the lawsuit would be beneficial to them, the court will not give a party an unfair procedural advantage by allowing it to seek testimony from witnesses it knows to be unavailable and then to ask for sanctions on the basis of that unavailability. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A court, on a party's motion, may limit discovery in avoidance of oppression, undue burden or expense in order to secure the just, speedy, and inexpensive determination of every action. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A defendant's financial condition is relevant to a punitive damages claim and a proper subject of discovery, if, under the applicable law, the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the amount of the punitive award, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

A defendant facing a claim for punitive damages may be required to answer discovery concerning current net worth, but cannot be compelled to reveal his financial status for the previous five years. The court may order plaintiffs' counsel not to divulge this information to anyone until such time as the court determines punitive damages liability, at which time the court will order what is to be done with the discovered information. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. Generally, discovery should be permitted under Rule 26 when the information sought is relevant to the claim or defense of the party seeking discovery, or to any other party's claim or defense. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

When a represented party is required to respond to discovery, the party's attorney must undertake some effort to ensure that the client makes a reasonable inquiry into the subject matters covered by the given request. An attorney's responsibility to actively participate in information gathering for discovery purposes is heightened when the client is not an individual but a legal entity such as a corporation or a governmental body. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

Where the attorney is a party's employee, who has at minimum a degree of control over the party's

procedural approach to prosecuting the lawsuit, proper compliance with discovery obligations may require him to personally assist in a diligent search for information available or under the possession or control of his client. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

The choice of an appropriate sanction to be applied when a party fails to comply with a discovery obligation is committed to the court's sound discretion. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327 (Pon. 2000).

Civil Rule 37 provides sanctions for the failure to comply with a discovery order, including making such orders in regard to the failure as are just. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327-28 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

No party is expected to engage in discovery for the benefit of another party. Kosrae v. Worswick, 9 FSM R. 437, 441 (Kos. 2000).

A court may order on its own motion that overdue responses not be deemed admissions of fact because the fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the court's discretion. Overdue responses to requests for admission are not customarily treated as having been admitted in the absence of a showing of actual prejudice to the propounding party combined with no showing of excusable neglect by the responding party. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

When confronting violations of the discovery rules (or alleged misuse of the discovery process) courts strive to apply sanctions commensurate with the degree of neglect or wrongdoing viewed in light of any harm suffered by the aggrieved party. Sanctions as harsh as those which would in effect establish a defendant's liability are generally issued only upon a finding of deliberate disregard of the rules or following a pattern of discovery abuse or related misconduct. O'Sullivan v. Panuelo, 9 FSM R. 589, 598 (Pon. 2000).

FSM Civil Rule 37(b)(2) gives the court the authority to levy sanctions against a party, including dismissal, for failure to obey a discovery order, and Rule 41(b) allows the court to dismiss a plaintiff's complaint for failure to comply with a court order. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

When the delay was within the movants' counsel's reasonable control, when the movants' inability to propound discovery because they failed to timely request it, will not affect their rights at trial – *e.g.*, they may still cross-examine the plaintiffs' witnesses, object to proffered evidence, and subpoena witnesses and documents, and when, taking account of all relevant circumstances surrounding the movants' omission, they have failed to show the excusable neglect that would justify enlarging their time to make discovery requests, an untimely motion to enlarge time for them to propound discovery requests will be denied. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219-20 (Chk. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Matter is discoverable if it is relevant and not privileged. Information is discoverable if the information

sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

When each paragraph of a discovery request begins by using the phrase "relating to" in a general sense, and each paragraph goes on to describe specific categories of information, the request is not overbroad. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

If a party has any of the documents asked for in a discovery request, it should produce them; if it does not, it should so indicate. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a party who has prevailed on a motion to compel discovery. Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submission from the affected parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

Even though a discovery order may compel a party to perform certain actions, such an order is not injunctive in nature because it does not grant or withhold substantive relief. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A discovery order is not appealable. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, and it is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Information which leads to admissible evidence is, by definition, relevant within the meaning of that word as used in Rule 26. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Relevancy is very broadly defined, including both directly relevant material and material likely to lead to the discovery of admissible evidence. If requested materials lead to discovery of admissible evidence, the discovery request is relevant. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

What is relevant in discovery is different from what is relevant at trial, in that the concept at the discovery state is much broader. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

Discovery should ordinarily be allowed under the concept of relevance unless it is clear the information sought can have no possible bearing upon the subject matter of the action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 471 (Pon. 2001).

A defendant cannot limit the scope of the plaintiffs' legitimate discovery by either denying the complaint's allegations, or by the way in which it characterizes those allegations. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 472 (Pon. 2001).

When a party has contended that plainly relevant information is not relevant, and has done so in the face of clear law that is contrary to its position, the question becomes whether the party's relevancy argument is so wide of the mark as to be frivolous. This is a prima facie case of a Rule 11 violation. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a party fails to comply with an order compelling discovery under Rule 37(a), the court may order that the matters regarding which the order was made or any other designated facts will be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When a party has yet to comply with the court's discovery order and discovery has been outstanding for an extended period, then that is one fact that the court will consider when contemplating sanctions if compliance is not forthcoming. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When only one of a defendant's offices has produced any discovery documents and when it is unlikely that other affected offices would have no documents related to the litigation, it raises the issue of the thoroughness of the searches done by the offices involved. The court will therefore order that defendant's counsel to designate an appropriate individual in each of the offices to conduct a search of relevant records to determine if any such documents exist and who will prepare an affidavit indicating what was done to locate relevant documents, and the result of that search. AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

The FSM Development Bank is an agency of the FSM government for purposes of discovery when the request for production plainly comprehends documents within the possession of the Bank, which is specifically named. AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

Pohnpei may be held liable for discovery sanctions of motion related expenses such as attorney's fees, but the FSM is exempt from such sanctions under Rule 37(f). AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

When a party's response to a request for documents is evasive and non-responsive, he will be ordered to answer the request, either by providing copies of the requested documents, or by making the requested documents available for review and copying. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

If a defendant has already produced the documents requested by subpoena, then nothing remains to be done by the defendant other than to advise the plaintiffs of that fact because the law does not take notice of trifling matters. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 (Pon. 2002).

A duty to supplement discovery responses may be imposed at any time prior to trial through new requests for supplementation of prior responses. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 (Pon. 2002).

Subpoenas under Rule 45 may be issued to parties or non-parties, although Rule 34 is used for production of documents, etc., from parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 613 n.1 (Pon. 2002).

When, if the court quashed the plaintiffs' subpoena and directed them to reform the request made by subpoena through a supplementary request for production under Rule 26(e)(3), the end result would be the

same as if the subpoena were left in place, and when the balance of the discovery equities weigh against the defendant, the subpoena will not be quashed. But that should not be construed to the effect that a subpoena is generally a substitute for a supplementation request because this denial is based on the equitable considerations generated by the defendant's conduct. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 & n.3 (Pon. 2002).

Discovery is not a game to be played for anyone's amusement. It is a serious undertaking requiring serious, considered responses. AHPW, Inc. v. FSM, 10 FSM R. 615, 617 (Pon. 2002).

Any party may serve on any other party a request to permit entry upon designated land or other property in the requested party's possession or control for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), and if the requested party fails to permit inspection as requested, the party seeking discovery may move for an order compelling inspection in accordance with the request, and if granted, the court may, after opportunity for hearing, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

When the plaintiffs failed to respond to a defendant's request for inspection of the property as required by Rule 34(b), their opposition to defendant's motion to compel inspection that the real intent of the request was to ask for plaintiffs to pay a portion of the survey's cost was inappropriate when made for the first time in the opposition, and, when even if timely made, it was not persuasive because the question of the property's ownership is central to the litigation and determining the respective properties' boundaries would be important evidence. The motion to compel the prpoertty inspection will therefore be granted. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

A bank's internal confidentiality policy is not dispositive as to whether its records are subject to discovery. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 131 (Pon. 2002).

Discovery restrictions may be broadened when a nonparty is the target. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 131 (Pon. 2002).

Records which are confidential, but not asserted to be privileged, are discoverable because parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action's subject matter. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

The party resisting discovery has the burden of clarifying and explaining its objections and to provide support therefor. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

The mere fact that discovery is burdensome is not a sufficient objection to that discovery provided the information sought is relevant or may lead to discovery of admissible evidence. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

A party, assuming that it is being truthful, may refuse discovery on the basis that it does not have the documents requested because it cannot produce documents that it does not have, but it must produce documents regardless of whether they are named by the document's actual title or not because it may not evade discovery through semantic equivocation. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

When a party has stated it has already produced the documents, it need not produce those documents again, but it must specifically identify the documents previously produced that are responsive to the requests. Adams v. Island Homes Constr., Inc., 11 FSM R. 130, 132 (Pon. 2002).

There is a real, substantial dichotomy between a privilege and a privacy interest, because if matter is privileged, it is not discoverable under Civil Procedure Rule 26(b)(1), which expressly provides that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in

the pending action. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

A party may not refuse to produce relevant discovery materials in order to prevent information damaging to it from coming to light. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

Personal conflicts between counsel do not excuse the failure to produce a document. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

When a party's record of discovery obduracy speaks for itself, the court may award attorney's fees and expenses as reasonable under all the facts and circumstances. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 447 (Pon. 2003).

When, given the scope and depth of the discovery disputes generated by a party's conduct, the court, in awarding fees to opposing counsel, will not find several billing entries showing work by both attorneys working together to be inordinate. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

In order to achieve the end of discouraging obstructionist discovery conduct, the "expenses," that are imposed as a sanction for failure to comply with discovery is to be given a more expansive meaning than the "costs" that are awarded as part of a civil rights judgment. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

When a party's actions necessitated discovery sanction attorney fee awards, that party cannot complain about being held to account for them under Rule 37(a)(4). Such awards are not limited to the 15% generally awarded in collection cases. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

If a motion to compel discovery is granted, the court shall, after opportunity for hearing, require payment of the moving party's reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 509 (Pon. 2003).

When a defendant has not paid a court-ordered sanction for costs related to the plaintiff's motion to compel discovery, the court may order that, if the sanction is not paid immediately, the defendant's answer be stricken. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 510 (Pon. 2003).

If a motion to compel answers to discovery is granted, the court must, after opportunity for hearing, require the party (or the party's attorney, or both) whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her. At most, the inconsistency between the request for production and the interrogatory created an issue for

resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM R. 630, 638-39 (Pon. 2003).

When a party is precluded from contesting its liability on an oral agreement as a result of its willful, bad faith discovery misconduct and when the plaintiffs' damages are also fully awardable under the plaintiffs' third-party beneficiary claim quite apart from any liability under the agreement, the party's contention that it is not liable under the agreement is wholly lacking in merit. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

Rule 69, which governs procedure on execution, is meant to benefit a judgment creditor, not a judgment debtor. It was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for the securing of information relating to the judgment-debtor's assets. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

When certain requested documents did not exist and therefore could not be provided and the plaintiffs had provided those responsive documents which were in existence at the time of issuance of the subpoena duces tecum, there is no basis for the defendants' motion to compel and accordingly it will be denied. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

When, during discovery that preceded the first trial, the defendant had the opportunity to take the plaintiff's deposition but did not; when he did not propound any other discovery; when he did not object when plaintiff's counsel noticed plaintiff's deposition in the Philippines and did not attend that deposition; when he did not comply fully with the plaintiff's discovery requests and the court ordered him to comply, but he did not and was subject to a $495.50 sanction; when, after the case was remanded for a new trial, the court set terms and conditions for conducting discovery, the first of which was that he pay the outstanding $495.50 discovery sanction before undertaking any further discovery, but it was not paid until five months after the discovery cutoff date; and when, by a motion filed twenty-six days before the re-trial was scheduled, the defendant sought leave to take the plaintiff's deposition, the defendant's motion to exclude the plaintiff's deposition from being offered at trial will be denied. Amayo v. MJ Co., 13 FSM R. 242, 246-47 (Pon. 2005).

When the defendant engaged in the dubious practice, at best, of filing contingent motions concerning discovery six months after the court-ordered discovery cutoff date and did not file his pretrial motions within the time specified and since, under Rule 37(a)(4), the court "shall" award attorney's fees against the party moving to compel discovery if the motion is denied and the court made no finding that the motion was substantially justified or that other circumstances make an award of expenses unjust, no reason exists under Rule 37(a)(4) why attorney's fees should not be awarded. The plaintiff's fee request will be granted. Amayo v. MJ Co., 13 FSM R. 242, 247 (Pon. 2005).

When a defendant seeks to have the plaintiff produce medical records in her possession and her response is that the defendant already has those records through the subpoena process, and since the records are relevant, the court will order the parties to confer in order to insure that the defendant has a copy of all medical records in the plaintiff's possession and the plaintiff will deliver copies of any records which the defendant does not already have. Sigrah v. Microlife Plus, 13 FSM R. 375, 377 (Kos. 2005).

When the plaintiff did not propound discovery so that the 30-day period within which to respond fell before the court-ordered discovery cutoff deadline and when the defendant did not object to the late request since it served discovery responses, the court, in the usual case, would deem the responses as a waiver of the untimeliness of that discovery, and permit the plaintiff to name the additional witnesses, but since the defendant now understandably asserts that it wants to depose the additional witnesses, which would mean reopening discovery, the court will not permit this and the plaintiff will be limited at trial to the one witness it already disclosed. Sigrah v. Microlife Plus, 13 FSM R. 375, 377 (Kos. 2005).

Rule 37(a)(4) provides that when a motion to compel is granted, the court shall, after opportunity for

hearing, require the party whose conduct necessitated the motion or the party, attorney, or trial counselor advising such conduct or both of them to pay the moving party the reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. This requirement of the rule is mandatory, and the hearing requirement is satisfied if the party has the opportunity to respond in writing to a potential assessment of attorney's fees for its failure to respond to discovery. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

A party that prevails on a motion to compel discovery is usually entitled to reasonable attorney's fees and costs as a sanction for the necessity to bring such a motion. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

A party whose motion to compel discovery is granted is entitled to reasonable expenses incurred in obtaining the order, including attorney fees and when counsel's supporting affidavit attached to the motion, asks for an award of $130 attorney fees for 1.3 hours of attorney work at $100 per hour as his reasonable expense incurred in obtaining this order, the non-movant had notice of the amount sought as a sanction and had an opportunity to be heard, not only on the motion itself, but also as to the requested fee sanction's reasonableness. Stephen v. Chuuk, 13 FSM R. 529, 531-32 (Chk. 2005).

Rule 37(a) attorney fee awards do not apply to a failure to respond to a request for admissions, because the automatic admission from the failure to respond is a sufficient remedy for the requesting party, so when part of the motion to compel concerned the movant's request for admissions, the court will reduce the attorney fee award requested for the motion to compel discovery. Stephen v. Chuuk, 13 FSM R. 529, 532 (Chk. 2005).

Previously awarded attorney's fees as sanctions for repeated non-compliance with the court's orders compelling discovery will, if unpaid, be added to the judgment. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Sanctions are provided to discourage an abuse or breakdown of the discovery process that would require court involvement. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The only proper remedy for a party's initial refusal to produce a document would be the imposition of attorney's fees because the opposing party had to bring a motion to compel the document's production. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 37(b)(2)(A) sanctions could not properly be applied for a party's earlier refusal to produce a document because that document was eventually produced, but could be, and were, properly applied for not permitting the inspection of the designated records as ordered by the court. The limitations on a court's discretion under Rule 37(b) is that the sanction imposed must be just and it must be specifically related to

the particular claim which was at issue in the court's order to provide discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

That some lesser sanction should have been considered first and imposed under Rule 37 is frequently the most advisable course of action, but Rule 37 does not require that, especially when the sanctioned party has a history of discovery abuse. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Civil contempt may be employed to coerce compliance with the trial court's orders compelling discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the defendants had eight months after he plaintiff filed its motion to amend to move to reopen discovery; when the parties stipulated to the facts necessary for the trial court to reach a decision on the promissory note and guaranty claims; and when the defendants admitted there was nothing to discover, the defendants cannot have been prejudiced by a lack of opportunity for discovery. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

When the court says discovery shall be completed by a certain date, it means both propounded and answered. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Six days is added to the 30 day time period to respond when service of the interrogatories and production requests occurs by mail. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

A defendant's motion to compel discovery will be granted when no good cause has been shown for the plaintiff's failure to comply. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 570-71 (Pon. 2007).

To respond to interrogatories, requests for production or requests for admission, a party is allowed either 30 days or 45 days from service of the summons and complaint. K&I Enterprises v. Francis, 15 FSM R. 414, 416 n.1 (Chk. S. Ct. Tr. 2007).

When a plaintiff moves to enlarge time to conduct discovery on allegedly newly-raised "novel" defenses and to file a response based thereon, but the "novel" defenses to which the plaintiff refers are merely arguments based on the law that fell within the scope of the denials set forth in the defendant's answer to the complaint, the motion to enlarge is without good cause and will be denied. Berman v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

Since the rule with respect to privileges applies at all stages of all actions, cases, and proceedings, it therefore applies during discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The government, by instituting an action, does not waive any privilege it may have and thereby submit to unlimited discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff has corroborating testimony from two witnesses, it has not shown why the former president's testimony on the same subject is essential to its case or that what it seeks to obtain from him it has not already obtained from the alternative sources. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

Unless manifest injustice would result, the court will require that the party seeking discovery pay the opposing party's expert a reasonable fee for time spent in responding to discovery. Since the time spent cannot be known with certainty until after it has been spent, Rule 26(b)(4)(C) contemplates that, as a matter

of general practice, payment will not be tendered to the opposing party's expert witness until after the discovery deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 (Pon. 2009).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Pretrial discovery has three major purposes: 1) to preserve relevant information that might not be available at trial, 2) to ascertain the issues that are actually in dispute between the parties, and 3) to allow a party to obtain information that will lead to admissible evidence on the issues that are in fact disputed. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Opposing counsel are expected to cooperate in the discovery process. The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention, and sanctions are provided to discourage an abuse or breakdown of the discovery process that would require court involvement. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

Discovery is designed to prevent litigation by ambush. Just as a plaintiff cannot use an opposition to a defendant's summary judgment motion to effect a de facto amendment to its pleadings to assert a new claim, a plaintiff ought not to be able to use the summary judgment process to, in effect, amend its discovery responses without allowing the defendant to conduct necessary discovery into the basis and circumstances of that new allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

A party should disclose a new allegation once it becomes aware of it since the party is under a duty seasonably to amend a prior discovery response if it obtains information upon the basis of which it knows that the response was incorrect when made, or it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party has failed to disclose an alleged incident and seems to have knowingly concealed it until it had to respond to the opposing party's summary judgment motion, it should not be allowed to put this allegation before the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

Since narrowing issues actually in dispute is one function of discovery, a party may not benefit at the summary judgment stage by tendering evidence it was under a discovery obligation to produce, but did not. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party was asked in discovery for the instances where it was alleged to have offered or given gratuities and the opposing party disclosed only one incident, the opposing party is limited to that instance and cannot seek to introduce evidence of another instance in its summary judgment opposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When the court has not previously considered aspects of discovery procedure and the interplay between the discovery rules and the summary judgment rule and when the civil procedure rules covering discovery and summary judgment are similar to U.S. rules, the court may look to U.S. authorities for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 n.6 (Pon. 2011).

As a general proposition, a party may obtain discovery of any matter, not privileged, that is relevant to his claims and that is admissible as evidence or calculated to lead to admissible evidence. Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

When the documents sought, if relevant, would have been relevant only to the plaintiff's derivative action claims and when the court's order dismisses those claims, the plaintiff is not entitled to have these

documents produced. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

In a suit over the transfer of shares, the corporation's policy for issuance of new stock certificates after transfer is certainly relevant and should be (and was) produced, but no other policy, whether adopted by the board or otherwise, appears relevant unless it involves the formalities needed for the transfer of shares, so only any further such policies should be produced. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

The President, even as a private litigant, is not an ordinary person. He must be granted some accommodation while at the same time balancing that accommodation with the adverse parties' right to discovery from a plaintiff. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Mori v. Hasiguchi, 18 FSM R. 188, 190 (Chk. 2012).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

Inadmissible evidence is still discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When, because of her failure to answer the opposing party's interrogatories the court ordered that those interrogatories will be deemed answered a certain way if the party has still failed to respond after 30 days and there was no response, the court may deem those interrogatories as answered a certain way and the opposing party may use those answers as a basis for summary judgment. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

Since the discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention, the parties may be instructed to consult and submit a joint plan for the completion of discovery, and, if the parties cannot agree on a joint plan, they must submit separate proposals and the court will set the discovery and motion deadlines. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

A request for a judicial review of an administrative decision regarding the tax code is appropriately filed in the Supreme Court trial division. Since there are no express statutory limitations on the admission of additional evidence or limitations of the court's subject matter, the Administrative Procedures Act applies, and the court will conduct a de novo review of the decision. Thus, all discovery requests must be honored. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

Even when the monetary discovery sanctions imposed on the respondent attorney's client and the client's eventual compliance with all discovery orders in that case serve as the full and final resolution of the discovery dispute from which a disciplinary referral case arose, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578-79 (Pon. 2014).

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal case, but in the absence of substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Attempting to obtain, under the civil discovery rules, either through a deposition or otherwise, discovery materials that the parties could not obtain under the more restrictive criminal discovery process, is one of the primary reasons for granting a stay of the parallel civil case. FSM v. Tokiwa Maru No. 28, 19 FSM R.

621, 627 (Pon. 2014).

Discovery differs greatly in civil and criminal cases. A party to a civil litigation is presumptively entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, but a criminal defendant is entitled to those documents which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 n.10 (Pon. 2014).

When the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the court's own sua sponte initiative or by motion of the parties. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 629 (Pon. 2014).

Since a defendant who is in default may participate in a damages hearing if necessary and proper to determine the damages amount, it would seem that a defaulting defendant might be able to conduct some discovery in that regard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

When it comes to a subpoena commanding the production of documents, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c-41d (Pon. 2015).

Since any communication made to or from an attorney can always be sought from the person or entity on the other end of the communication, there should always be another practical means of obtaining the substance of that communication if it does not violate attorney-client privilege or the work product doctrine. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

The right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

When a defendant has not provided sufficient answers to the plaintiff's discovery request made on May 29, 2014 as ordered by the court on October 23, 2014, the plaintiff's second motion to compel will be granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

When a defendant has not provided sufficient answers to the plaintiff's discovery request as ordered by the court, the defendant and her counsel may be jointly and severally liable for the plaintiff's expenses incurred in bringing a second motion to compel is granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

Under FSM Civil Rule 26, parties are entitled to discovery regarding any matter, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The rules governing discovery are quite permissive, and the scope of examination is very broad. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Post-judgment discovery from any person is expressly available. The judgment creditor or a successor in interest when that interest appears of record, may, in aid of the judgment or execution, obtain discovery from any person, including the judgment debtor. The judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Discovery is designed to prevent litigation by ambush. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

The three major purposes for conducting pretrial discovery are: 1) to preserve relevant information that might not be available at trial, 2) to ascertain the issues that are actually in dispute between the parties, and 3) to allow a party to obtain information that will lead to admissible evidence on the issues that are in fact disputed. Failure to provide discovery frustrates these purposes. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

It is expected that a party in civil litigation will be deposed during the course of discovery. This is particularly true of a plaintiff. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

Pretrial depositions are an expected and normal part of pretrial discovery. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 437 (Pon. 2016).

That a document can also be obtained elsewhere is not a ground for a party to refuse produce a document requested by another party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439, 441 (Pon. 2016).

Traditionally, the courts have administered justice with mercy. They have allowed a party a second opportunity to comply with the discovery rules and orders made under them. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

If documents are available from a party, it has been thought preferable to have them obtained from that party pursuant to Rule 34 rather than subpoenaing them from a nonparty witness. This is because witnesses who are not parties to the action should not be burdened with the annoyance and expense of producing the documents sought unless the plaintiff is unable to discover them from the defendant. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441-42 (Pon. 2016).

The mere fact that producing documents would be burdensome and expensive and would interfere with a party's normal operations is not inherently a reason to refuse an otherwise legitimate discovery request. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

While requests for the production of documents are generally complied with by providing the requestor with copies of the documents requested, that is not the only method to comply with a request. The requested party may permit the requesting party to inspect and copy the documents. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

A party may serve on another party a request to produce and permit the party making the request, or

someone acting on the requestor's behalf, to inspect and copy any designated documents which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

Any confidential patient-doctor's information can be redacted from documents provided in discovery. The fact that a medical clinic received certain sums as payments for medical services should be discoverable, but what those medical services were and for which patients, need not be provided. That the clinic received an aggregate total payment of some amount for a particular type of service may be provided without violating doctor-patient privilege. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The proper procedure for the inspection of documents is that the party upon whom the request is served must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated, and the party who produces documents for inspection must produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the request. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The mere allegation that the work product doctrine applies, is insufficient to claim the privilege. The party who asserts the work product privilege must demonstrate that the doctrine applies. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

When the matters requested are either facts concerning the creation of work product or facts contained within work product and are thus discoverable, the responding party should not have objected to the request but produced his documents. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Even when a party is entitled to the relief it has requested – dismissal of certain claims and defenses – as discovery sanctions, the court, under Rule 37(a)(3) practice, has discretion in determining whether to instead order further answers. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

The general rule is that if a party has the documents sought, it is always preferable that those documents be obtained from the party rather than burden a nonparty. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal, it is thus a nonappealable interlocutory order reviewable only upon final judgment or order. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

If a party fails to obey an order to provide or permit discovery, the court may make such orders about that failure as are just, including an order striking out pleadings or parts thereof. Thus, if a party continues to disobey the court's order to provide discovery (including an order to appear at a deposition), the court unquestionably has the authority to strike out the parts of her joint pleadings that pertain to her. Her co-party's pleadings would remain. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, a request for communication documents to and from an attorney are shielded by the attorney-client privilege and a motion to compel their production will be denied, but a motion to compel the production of communication documents to and from an engineer co-project manager will be

granted. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

– Discovery – Protective Order

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

Because methods of discovery may be used in any sequence, and courts rarely order that a deposition not be taken at all and where there has been inexcusable delay in responding to interrogatories the court will not issue a protective order barring the taking of a deposition until after less burdensome means have been tried. Instead the court will set deadlines for compliance with the outstanding discovery requests. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 408 (Pon. 1994).

Official duties or employment obligations do not of themselves constitute a valid basis for a party to obtain a blanket protective order against being deposed in a lawsuit. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

Absent a showing of any of the factors listed in FSM Civil Rule 26(c), the court will not intrude at the deposition stage at the insistence of a party to declare what is relevant information that may be sought. Nahnken of Nett v. United States (II), 6 FSM R. 417, 422 (Pon. 1994).

Upon motion by a party or by the person against whom discovery is sought, and for good cause shown, a court may issue an order, which justice requires, to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that certain matters not be inquired into, or that the scope of discovery be limited to certain matters. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

Relevant information is discoverable unless it is privileged. FSM Civil Rule 26(b)(3) protects against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party concerning the litigation. Information prepared in anticipation of litigation is discoverable only upon a showing of "good cause." Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287-88 (Pon. 1998).

Generally, a party should move for a protective order before the date set for discovery because a party may not remain completely silent when it regards discovery as improper. If it desires not to respond it must object properly or seek a protective order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290 (Pon. 1998).

The appropriate test to determine the scope of work product protection to be afforded a document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471,

481 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

Where it would be unjust to sanction defendants whose whereabouts are unknown when what might have been discovered had their depositions gone forward was limited to information concerning insurance coverage, which could have been obtained by cheaper and simpler forms of discovery, the court will issue a protective order that the defendants need not appear for deposition, but that the document production request relating to insurance policies be honored. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 154 (Pon. 1999).

A trial judge abuses his discretion when he denies a motion to compel production of financial information in a case where punitive damages are claimed, if the plaintiff submits factual support for the claim and the defendant fails to demonstrate good cause for a protective order preventing discovery; but the defendant is usually entitled to a protective order that the information only be revealed to the discovering party's counsel or representative, that demands be limited only to information needed to determine the defendant's present net worth, and that the information be sealed or otherwise restricted to use in the current proceeding only. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A court may make such orders as justice requires to protect a party from undue burden or expense with respect to discovery sought from that party. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Upon motion by a party or by the person against whom discovery is sought, a court may issue an order, which justice requires, to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that certain matters not be inquired into, or that the scope of discovery be limited to certain matters. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 276 (Pon. 1999).

A protective order will be granted when defendants seek information related to other reef damage cases in which Pohnpei has brought suit or entered into settlement agreements that has no relevance and is not within the scope of Rule 26 because it has no bearing on facts surrounding the ship's grounding, the defendants' liability, or possible damages, it does not relate to either party's claims or defenses, and to require Pohnpei to produce such information would be oppressive and burdensome. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 277 (Pon. 1999).

A protective order will be granted preventing the deposition of defendants' counsel and his production of documents when there are other means by which the information can be obtained, when the information does not appear to be as relevant and necessary as suggested, and when the information involves counsel's opinions in a work he co-authored 25 years before. The plaintiff's need for the information is outweighed by the hardship on defendants, who would be forced to confront the possibility of obtaining different counsel at a late stage of the litigation. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

Because a court may order that a trade secret or other confidential commercial information should not be disclosed or should be disclosed only in a designated way, the crafting of an appropriate order to protect the disclosure of confidential information lies within the trial court's discretion. AHPW, Inc. v. FSM, 10 FSM R. 277, 278 (Pon. 2001).

A court may order confidential commercial material disclosed to opposing counsel to review and to

submit to the court a list of the individuals who require access to the material and for what general purposes, and to also apprise the court generally of the quantity of material involved. If the proposed further disclosure appears reasonable under all the circumstances, the court may then direct the named individuals to submit affidavits, stating that they will use the information only for the limited purpose of the litigation and that they agree not to disclose the information to or discuss it with persons other than the attorney and the persons appearing on the list submitted to the court. All persons given access to the confidential information will be subject to sanction if they violate the protective order. AHPW, Inc. v. FSM, 10 FSM R. 277, 278-79 (Pon. 2001).

On the question of attorney work product, Rule 26(b)(3) protects against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney, trial counselor, or other representative of a party concerning the litigation. The party who asserts the work product privilege must demonstrate that the doctrine applies. Merely alleging that the doctrine applies is not sufficient. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

When, instead of making its own *in camera* review, the trial court ordered the bank to make the records for the other specified construction projects available to plaintiffs' counsel for a preliminary examination and that plaintiffs' counsel was to keep confidential any information gathered and not reveal it to anyone (even his clients) without a further court order, the trial court did issue a protective order concerning those records and did not abuse its discretion by framing its own protective order that was designed to achieve the same goal as the bank's suggested *in camera* review – maintaining the records' confidentiality. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247-48 (App. 2006).

A mere assertion that a potential deponent lacks knowledge is not a ground for granting a protective order. The party seeking discovery is not required to establish that the person whose deposition it seeks has information about which he or she could testify at trial. Indeed one important purpose of discovery is to ascertain who has such information. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

A plaintiff's motion for a protective order to bar all discovery will be denied when the defendant's motion to compel discovery was granted. A defendant is not barred from discovery because it opposed an extension of time for answering discovery, or because it filed a motion to compel discovery. Since discovery in a factually-intensive case will be commensurately extensive, the plaintiff in such a case will not be granted a protective order when he urges that the discovery will be lengthy, detailed, unduly oppressive, and expensive but offers no specifics in support. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 571 (Pon. 2007).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

Ordinarily, the court will not grant motions for protective orders to substitute written interrogatories for oral depositions in view of the recognized value and effectiveness of oral over written examinations. While a deposition on written questions may be useful in certain circumstances, this procedure is inflexible, and as a result, infrequently used since depositions upon written questions are not as effective as oral depositions in eliciting spontaneous answers. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

When none of the factors listed in FSM Civil Rule 26(c) for granting a protective order – i.e. "annoyance, embarrassment, oppression, or undue burden or expense" – are present, the court will deny a request that a deposition be taken by means of written, instead of oral, questions. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 68 (Yap 2010).

The proper mechanism to block discovery requests is a protective order for good cause shown under FSM Civil Rule 26(c) and not by motion to strike under FSM Civil Rule 12(f). GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

A party may not ask for an order to protect the rights of another party or witness because a party ordinarily does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena. FSM Dev. Bank v. Carl, 20 FSM R. 329, 331 (Pon. 2016).

Non-parties are not without the court's protection since a non-party under subpoena may move to quash the subpoena directed to him. FSM Dev. Bank v. Carl, 20 FSM R. 329, 332 (Pon. 2016).

For good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Accordingly, the court may require: 1) that the discovery not be had; 2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, 4) that certain matters not be inquired into, or 5) that the scope of the discovery be limited to certain matters. FSM Dev. Bank v. Carl, 20 FSM R. 329, 332-33 (Pon. 2016).

A court may quash or modify a subpoena if it is unreasonable and oppressive, but in view of the broad test of relevancy at the discovery stage, such a motion will ordinarily be denied. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

Generally, a protective order is granted only when it clearly appears that the information sought is wholly irrelevant and could have no possible bearing on the issue, and a witness cannot escape examination by claiming that he has no knowledge of any relevant facts, since the party seeking to take the deposition is entitled to test his lack of knowledge. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The general rule is that a protective order will not likely issue at the discovery stage unless the information sought is privileged or wholly irrelevant. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

When the information sought targets the judgment-debtor's sources of income and the subpoenas are reasonably calculated to uncover assets not previously disclosed, good cause to issue a protective order is not shown. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

– Dismissal

When there are significant issues of fact which may affect the defendant's statute of limitations defense in a civil action, a motion to dismiss on statute of limitations grounds must be denied. Lonno v. Trust Territory (III), 1 FSM R. 279, 281-82 (Kos. 1983).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM R. 146, 147 (Pon. 1993).

Dismissal with prejudice is a drastic sanction to be applied only in extreme situations. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Where just, the court has discretion to enter a judgment of default based on a party's failure to obey an order or permit discovery, FSM Civ. R. 37(b)(2)(C), or based on a plaintiff's failure to prosecute his case, FSM Civ. R. 41(b). McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

The sanction of dismissal with prejudice should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Where the plaintiff has failed to obey the court's discovery orders, and has repeatedly refused to submit to a deposition although the court has tried to accommodate plaintiff's claim of financial hardship, and failed to make a good faith effort to respond to interrogatories, the plaintiff has demonstrated an express lack of a good faith effort to move the litigation forward, leaving the court no choice but to dismiss the case with prejudice. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23-26 (Pon. 1995).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Dismissal with prejudice of a plaintiff's prior action constitutes a judgment on the merits, which has a res judicata effect, barring the relitigation of all issues that were or could have been raised in that action. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

Dismissal may be ordered when plaintiffs have not complied with a lesser sanction designed to relieve prejudice to a defendant caused by plaintiffs' fault. Damarlane v. United States, 7 FSM R. 350, 354-55 (Pon. 1995).

It is not an abuse of discretion for a trial court to order payment of a sanction instead of dismissal when the plaintiffs failed to comply with a court order to prepare a proper pretrial statement and then dismiss the case when the sanction was not paid. Damarlane v. United States, 8 FSM R. 45, 58-59 (App. 1997).

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

When the stakeholder can demonstrate that it is disinterested, it is appropriate for the court to dismiss the stakeholder from the action following the deposit of the funds at issue or the posting of a bond. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM R. 295, 296 (Pon. 1999).

A motion to dismiss based on an allegation that the plaintiff's trial testimony was untruthful and intentionally misrepresented material facts concerning the ownership of the land beneath his hotel and restaurant will be denied when the plaintiff had ownership rights to some of the land and a land use agreement for the rest and neither defendant asked whether there were other owners of the land and the plaintiff did not volunteer this information. This omission does not make the plaintiff's testimony an intentional misrepresentation. Jonah v. Kosrae, 9 FSM R. 332, 333-34 (Kos. S. Ct. Tr. 2000).

Delay in a case that is attributed to the time taken to designate a justice and for the clerk's preparation of the record, is not the type of delay that can be properly attributed to the appellant and be a ground for dismissal. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

A party is precluded from moving to dismiss on the basis of a stale summons and amended complaint, since by not filing a Rule 12(b) motion on the point, nor asserting it in his answer to the amended complaint, he has waived any defect in this regard. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

Failure by a plaintiff to meet deadlines set out in an order may result in dismissal under Civil Procedure Rule 41(b), while a similar failure by a defendant may be met with an entry of default under Civil Procedure Rule 55(a). Kosrae v. Worswick, 9 FSM R. 536, 540 (Kos. 2000).

A motion to dismiss for failure to join necessary parties may be denied without prejudice when it is at too early a stage of the proceedings to determine whether complete relief among the parties cannot be obtained without the joinder of others. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a complaint's first cause of action is dismissed for lack of jurisdiction, and its only other cause of action is dismissed for failure to state a claim upon which relief may be granted, the complaint is thereby dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

A plaintiff in a civil lawsuit seeking affirmative relief has the burden of pursuing that relief with reasonable diligence. Initially, the burden of showing some excuse for any delay in prosecution ought to be borne by the plaintiff. If the excuse is anything but frivolous, the burden shifts to the defendant to show prejudice from the delay. If prejudice is demonstrated, the burden shifts back to the plaintiff to show that the force of its excuse outweighs any prejudice to the defendant. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

Dismissal under Rule 41(b), like Rule 37, should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. Kosrae Island Credit

Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A defendant may not move for a voluntary dismissal of the plaintiff's action. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

Under the terms of a dismissal with prejudice, a defendant secures the same relief as it would have had the case gone to trial and it had prevailed. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM R. 244, 249 (Pon. 2001).

When a defendant is granted summary judgment on the complaint against him, that defendant's cross-claim for contribution and indemnification from another defendant in the event that he is found liable on the complaint will be dismissed since he has no basis to seek indemnification or contribution because the summary judgment order dismissed the complaint against him. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

A case that appears to rest on the assertion that the Land Commission gave title to the land in question to a clan will be dismissed when the Determination of Ownership names a person as the sole owner of the land. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

A motion to dismiss will be denied when the parties' later stipulation to entry of partial judgment made moot any contention that the defendants' subsequent payments entitled them to a dismissal of the bank's claim to foreclose and sell the vessels, and when the pleadings and the mortgage terms on their face entitle the bank to such a remedy if its factual allegations are taken as true, as they must be on a motion to dismiss or for judgment on the pleadings. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 331 (Pon. 2001).

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

Dismissal of John Doe defendants does not prohibit the plaintiff from seeking to amend its complaint if it does ascertain other parties should be named defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

When state law clearly provides that no action shall be brought against the state for any actions or omissions of the Chuuk Coconut Authority and that the Authority's debts or obligations shall not be debts or obligations of the Legislature or state government, and neither will be responsible for the same, the state and the governor will be dismissed as defendants from a suit against the Authority because as a matter of law no action lies against the state and no liability attaches. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

The separation of powers doctrine precludes the Chuuk State Supreme Court from exercising

jurisdiction over the claims that the plaintiff should be speaker of a municipal legislature and will dismiss the action. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

A plaintiffs' attorney's failure to properly plead their claims is not a sufficient justification to prevent the plaintiffs from being able to bring their claims at all because a complaint should not be dismissed and a party precluded from relief when a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When the plaintiff failed to file any papers to advise the court of the defendant's failure to complete his performance as ordered and when the plaintiff also failed to request a delay of the dismissal, to accommodate the additional time needed to obtain permits, the court properly assumed that the land filling had been completed as agreed to by the parties and as ordered by the court, and the court's dismissal of the case was proper and in accordance with its earlier order. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

Once a party's death has been suggested on the record under Civil Procedure Rule 25(a)(1), the ninety-day deadline for making a motion for substitution of that deceased party starts running, and when the ninety days has passed and no motion for substitution or for enlargement of time has been filed, that party will be dismissed. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed. The factors the court must consider include: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 404-05 (Chk. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment in a rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (Chk. 2003).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

A dismissal with prejudice constitutes a judgment on the merits. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

Absent an order dismissing it, a defendant is still a party despite its deletion from the case caption. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

A case against one defendant will not be dismissed because that defendant will be a witness in the case since a party to a civil action is expected to be a witness in his own case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 27 (Chk. 2003).

A dismissal must be with prejudice when a plaintiff cannot under any theory state a claim for which relief can be granted. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Even if the court permitted the inclusion of Doe defendants, in order to replace a Doe defendant with a named party, the plaintiffs would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the Doe defendant with a named defendant, and that to do so, all the Rule 15's specifications must be met, and since even in the absence of John Doe defendants, the plaintiffs can still move to amend their pleadings should the plaintiffs identify through discovery other persons who may be liable on the plaintiffs' claims in a case, the court will dismiss without prejudice the Doe defendants when no reference was made to them in the complaint's body. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

The "statute of limitations" is an affirmative defense which must be raised in either the answer or in a motion to dismiss. A plaintiff's failure to timely oppose a defendant's motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

When a determination of ownership by the Land Commission is subject to appeal to the Court within 120 days from the date of receipt of notice of the determination and when it is alleged that the plaintiff never received notice of the determination of ownership, accepting the alleged facts as true, then the appeal time limit of 120 days never began to run. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Claims against the Land Commission for violation of statute and violation of due process are subject to a limitations period of six years. When claims against the Land Commission based upon Land Commission actions which took place in 1984 and before occurred more than six years ago, they are barred by the statute of limitations and should be dismissed. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the plaintiff did not file any timely opposition to the defendant's motion to dismiss, the plaintiff's failure to file a memorandum in opposition to the motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the allegations made in the complaint are for causes of action that accrued more than seven years ago, and when claims against the Kosrae State Land Commission for violation of statute and violation of due process are subject to a limitations period of six years, the claims based upon Land Commission actions which took place in 1997 are therefore barred by the statute of limitations and defendants Kosrae State Land Commission and Kosrae state government will be dismissed from the action. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The doctrine of claim preclusion (a form of res judicata) does not bar a later action when the court order denying the plaintiff's intervention (in part) in an earlier action shows that intervention was denied because the intervenor had no interest in the subject matter of the litigation, and a motion to dismiss on that ground or on the grounds that that the court lacks subject matter jurisdiction because the earlier court already had the case, or that the plaintiff is barred by his alleged "unclean hands" because he omitted mention of the earlier action allegedly to circumvent the other court's jurisdiction are therefore without merit. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's state law claims will not be dismissed because he is seeking a large amount of damages. The amount of damages sought does not determine whether a claim is to be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

When the court gave the plaintiff notice that res judicata might apply and an opportunity to respond and when the previous case was dismissed under Rule 41(b) for failure to prosecute and was thus an adjudication on the merits, the plaintiff is barred from relitigating or filing a new case involving the same parties and subject matter – the matter is res judicata – and the court may dismiss it. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Motions to dismiss are not pleadings and oppositions to such motions are not responsive pleadings. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Although not listed in Civil Rule 8(c), failure to exhaust administrative remedies is an affirmative defense. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

Unnamed persons listed as John Doe defendants who were never identified or served process will be dismissed. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

A timely-filed motion to reconsider an order of dismissal is considered a Rule 59(e) motion to alter or amend a judgment. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

When the complaint names Chuuk's Governor, acting in his official capacity, as a defendant and alleges that he had a duty to pay for the insurance in question, but the evidence presented supported a claim against the State of Chuuk itself and not against the Governor in his official capacity, the complaint will be dismissed with prejudice as to the Governor of Chuuk in his official capacity. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 656 (Pon. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A

case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When each party seeks relief solely against the other, and there is no allegation that the United States is liable for either party's alleged breach of contract, or liable to the defendant for the plaintiff's alleged violations of due process, or other claims and when, even assuming the United States has some interest in the subject of the action because it is the funding source, but there is no suggestion by either party that the United States cannot protect its own interests and there is no claim that either of the parties has a substantial risk of incurring double, multiple or inconsistent obligations, the plaintiff is not entitled to have the counterclaims dismissed on the ground that the United States is an indispensable party. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482-83 (Pon. 2009).

The four factors in Rule 19(b) the court must consider before finding the case cannot proceed without an indispensable party are: 1) the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.1 (Pon. 2009).

There is no legal basis for a motion to dismiss for failure to join a indispensable party when the person the defendant asserts is an indispensable real party in interest is in fact a party as he is one of the plaintiff heirs of Edmond Tulenkun and when it is not correct that the person who funded the $500 in issue is an indispensable party since this person was not a party to the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A corporation has no valid cross-claim against a co-party and its cross-claims will be dismissed when it was not a party to the lease upon which the cross-claims are based and was not named as an intended third-party beneficiary in the lease. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

The dismissal of "John Doe" defendants will not prevent a plaintiff from later seeking to amend her complaint if she ascertains that others should also be named defendants. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

While a vacated sua sponte dismissal without notice may mean that a later dismissal after notice is more likely to be a further abuse of discretion than a dismissal made on the court's own motion but only after notice, it does not automatically follow that every dismissal after a vacated sua sponte dismissal must also be an abuse of discretion. Nevertheless, courts should tread carefully here because, to an impartial observer, the process may by then seem tainted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

A plaintiff is not precluded from relief just because the party's lawyer has misconceived the proper legal theory of the claim since a plaintiff need not even advance a legal theory. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must be dismissed when a plaintiff has not demanded action by the corporation's directors unless the court finds that Rule 23.1's demand requirements are excused under the rule's alternative provision that the plaintiff explain his reasons for not making the effort. Courts have allowed recourse to this reasons "for not making the effort" clause when a demand would be futile, useless, unavailing, or an idle ceremony. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A partial summary judgment motion will be denied when it asks that the individual defendants be dismissed because the corporate defendant's presence in the case is solely as an interpleader – as a party who has joined in one case all those persons with claims to any of the 2,160 shares so that all their rights can be adjudicated and the corporation will abide the result – ignores the plaintiff's tort claims of attempted improper interference with his purchase of the stock and that at least one individual defendant seems central to those claims and the corporation may also be involved. Mori v. Hasiguchi, 17 FSM R. 630, 645 (Chk. 2011).

Failure to exhaust administrative remedies is an affirmative defense which a defendant must plead and prove. But when a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

A motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot accord complete relief between the parties already present in the action without the joinder of others. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and

may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

The President has absolute immunity from damages liability for his official acts. Furthermore, the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a Congressionally enacted statute. Since suits contesting the actions of the executive branch should be brought against the President's subordinates, not against the President himself, a motion to dismiss the President will therefore be granted. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

When no extraordinary circumstances are present in a suit over the enforcement of a statute, public officers, in their individual capacities, will be dismissed from the suit, but since injunctive relief can be had against them in their official capacities, they will not be dismissed in their official capacities. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Although the rule permits dismissal if a case is filed in an improper venue, a more likely remedy, particularly when the litigation has progressed beyond its early stages, is not to dismiss the case but for the court to, on its own motion or otherwise, transfer it to any venue in which the matter might properly have been brought. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

When the mortgage foreclosure portion of the action is being dismissed without prejudice pursuant to the mortgage's forum selection clause and when that dismissal leaves no other cause of action against a co-mortgagor, the court will deem it advisable to deny the plaintiff's motion for a default judgment against the co-mortgagor, and, since there is no cause of action left against the co-mortgagor, he must also be dismissed as a defendant. The bank's motion is therefore be denied as moot. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 95 (Yap 2011).

Standing must be found for each count of a complaint or that count will be dismissed. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

Since an action will be dismissed as to a deceased party if no motion for substitution is made within 90 days after the suggestion of death, when the court has not received a motion for substitution, and the plaintiffs do not appear to intend to file such a motion, the court will dismiss the deceased party from the case and order that the caption in future filings reflect such dismissal. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

The court did not dismiss a plaintiff's claims sua sponte when the court did not decide its own motion but granted summary judgment as the result of a defendant's motion to dismiss, to which the plaintiff did not file an opposition. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18 FSM R. 270, 274 (Chk. 2012).

A defendant, who has asserted in its answer the lack of personal jurisdiction over it as a defense, has preserved that defense for determination before trial and it may move for the issue's determination as a

preliminary matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 287-88 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

In determining whether a case ought to be dismissed because necessary and indispensable parties are not joined, the court must consider: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or to those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed, but a motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot afford complete relief between the parties already present in the action without the joinder of others. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289-90 (Yap 2012).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal will not be prejudiced if the complaint against it included a vicarious liability claim against the principal for an agent's acts even if the plaintiffs do not also sue the agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Joint tortfeasors are not indispensable parties. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A party will appeared to have preserved the defense of lack of personal jurisdiction for determination by

motion before trial when the answer denies the plaintiffs' averment that the party was "subject to *in personam* jurisdiction in this Court." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

Civil Rule 4(j) authorizes the dismissal without prejudice of any defendant not served with process within 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 (Yap 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

When some defendants were never served with the complaint and summons, the court never had personal jurisdiction over them and the plaintiffs' case against them was considered abandoned and dismissed. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

When the appellate court vacates a trial court dismissal, the case will be returned to the trial court in the same posture it was in when the trial court dismissed it. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

When after notice that the case was subject to dismissal for failure to prosecute, the plaintiffs acquiesced to a dismissal so that they could "appeal forthwith," they necessarily must have abandoned their remaining nuisance claim because they could have responded that they wanted trial on the remaining claim and reminded the court that they had earlier asked that trial take place four weeks after their motions were decided but they did not. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

When, in response to the defendants' interrogatories asking the plaintiff about all facts that gave rise to the certain defendants' liability both individually and as board members, the plaintiff responded that he had none, those defendants will be dismissed. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When there are no factual allegations that a defendant took any actions or failed to take any action in an individual capacity, he will be dismissed as a defendant in his individual capacity. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When the defendants have not shown that they have a right, as a matter of law to a corporate official's dismissal in his official capacity, he will be dismissed only in his individual capacity, but when the plaintiff has alleged actions by another official that, if true and if proven, would give rise to tort liability for the violation of the plaintiff's civil rights, that person will not be dismissed as a defendant. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654 (Chk. S. Ct. Tr. 2015).

Because the goal is to protect the rights of infants, a complaint should not be dismissed with prejudice as to the minor. The minor may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old, but before then his father may not appear without counsel on his behalf. Pillias v. Saki Stores, 20 FSM R. 391, 396 (Chk. 2016).

Under Civil Rule 25(a)(1), when a party dies, the court may order substitution of the parties, but once the death is suggested on the record, a ninety-day time frame is triggered to file the substitution motion and if this deadline is not met, the action will be dismissed as to the deceased party. Johnson v. Rosario, 21 FSM R. 7, 9 (Pon. 2016).

When an action is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, it will be dismissed. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Under Kosrae Civil Rule 41(b), the court may dismiss a claim for the plaintiff's failure to prosecute or to comply with the court's rules or with any court order. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Even though it is an affirmative defense, a court may choose to dismiss claims based on the statute of limitations, when the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense. Tilfas v. Kosrae, 21 FSM R. 81, 87 (App. 2016).

When it is clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the statute of limitations defense, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

The decision to dismiss a case is committed to the trial court's sound discretion. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

At the pleader's option, Rule 12(b) defenses may either be raised in a separate motion before pleading or may be raised in the responsive pleading. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

When a complaint's allegations are subject to the defense that the statute of limitation has lapsed, a court may choose to dismiss the action, even though it is an affirmative defense. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

– Dismissal – After Plaintiff's Evidence

When a plaintiff at trial failed to introduce evidence that would show one defendant's liability, that defendant may be dismissed and excused from the remainder of the trial, and when the other defendant fails to object to that defendant's withdrawal the court may accept that as the other defendant's abandonment of its cross claims against that defendant. Jonah v. Kosrae, 9 FSM R. 335, 344-45 (Kos. S. Ct. Tr. 2000).

It was not error for the trial court to deny a Rule 41(b) motion to dismiss when, after the plaintiff completed the presentation of its evidence, the defendant moved for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief but not only made out a prima facie case for unjust enrichment sufficient to defeat the defendant's motion, but went further, and established by a preponderance of the evidence each element of its case. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

A defendant may, without waiving defendant's right to offer evidence in the event the motion is not granted, move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

The court must first look to FSM sources of law rather than begin with a review of other courts' cases, but when an FSM court has not previously construed the involuntary dismissal at the close of the plaintiff's case-in-chief portion of Civil Rule 41(b) which is identical or similar to the U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.2 (Chk. 2006).

On a Rule 41(b) motion to dismiss after presentation of the plaintiff's case-in-chief, in determining whether the plaintiff has shown a right to relief, the court is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences. If the court determines that the plaintiff has not made out a prima facie case – has shown no right to relief, the defendant is entitled to have the plaintiff's case dismissed. Even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies and grant a Rule 41(b) motion to dismiss. Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

If a Rule 41(b) motion is made at the close of the plaintiff's case, the court may then determine the facts and, if the court concludes that the plaintiff has not made out a case, render judgment against the plaintiff or decline to render any judgment at all until the close of all evidence. If the court dismisses the case after the plaintiff has presented his case-in-chief, the court must make its findings of fact. Hauk v. Lokopwe, 14 FSM R. 61, 64-65 (Chk. 2006).

A prima facie case is not always enough to defeat a Rule 41(b) motion to dismiss at the end of plaintiff's case-in-chief. A plaintiff has failed to present even a prima facie case when on none of his asserted causes of action, did he proffer any evidence as to the amount of damages he allegedly suffered and when he failed to show that any defendant's alleged wrongful act or omission caused damages to him although necessary elements of most of the plaintiff's causes of action were that a wrongful act caused damages in some amount that the court can reasonably calculate. Causation and reasonably calculable damages must be shown as part of a prima facie case. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

When a plaintiff complained of a series of acts by various defendants that he felt were discriminatory, that is, that did not treat him in the manner to which he thought he was entitled, but he did not allege, nor did he put on any evidence, that he was discriminated against on the basis of sex, race, ancestry, national origin, language, or social status and no evidence was adduced that any of the acts complained of caused the plaintiff any damages, the court therefore dismissed this cause of action. Hauk v. Lokopwe, 14 FSM R.

61, 65 (Chk. 2006).

When a case is dismissed at the close of the plaintiff's case-in-chief, the defendants, as prevailing parties, are entitled to their costs of action. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

When the defendant did not move for dismissal at the conclusion of the plaintiff's case, but instead incorporated its motion to dismiss under FSM Civil Rule 41(b) in its written closing argument that it submitted post trial, the motion will be denied because that rule provides that a defendant may move for dismissal of an action after the plaintiff has concluded its case without prejudice to the defendant's right to present evidence in the event the motion is denied. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 656 (Pon. 2008).

If, after the plaintiff has completed the presentation of plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, moves for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief, and if the court then renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Ehsa v. Kinkatsukyo, 16 FSM R. 450, 453 (Pon. 2009).

A defendant may, under Rule 41(b), move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 45 (Chk. 2010).

When a defendant has moved for dismissal after the plaintiff has completed its evidence, the court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the plaintiff's case dismissed. But even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies and grant a Rule 41(b) motion to dismiss. That is, the court must view the evidence with an unbiased eye, without any attendant favorable inferences. The evidence must be sifted and balanced and given such weight as the court deems fit. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 (Chk. 2010).

When a Rule 41(b) motion is made at the close of the plaintiffs' case, the court then determines the facts and, if the court concludes that the plaintiffs have not made out a case, renders judgment against the plaintiffs or the court may decline to render any judgment at all until the close of all evidence. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 (Chk. 2010).

The trial court, when ruling on a Rule 41(b) motion to dismiss after the close of the plaintiff's case, can find facts and grant dismissal for less than the whole case and continue trial on the remaining claims. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46-47 (Chk. 2010).

When there was no evidence before the court from which it could find that the defendant's contractor intentionally failed to perform a manifest duty in reckless disregard of the consequences or that its act was accompanied by fraud, ill will, actual malice, recklessness, wantonness, oppressiveness, or willful disregard of the plaintiffs' rights, a motion to dismiss the plaintiffs' punitive damages claim will be granted. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

The court, when declining to render judgment on a Rule 41(b) motion to dismiss, may indicate its legal reasoning and highlight the evidence which supports it. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When, after the presentation of the plaintiffs' evidence, the court partially denied a motion to dismiss and when, on the record as it now stands, the plaintiffs may be entitled to some relief, the court awaits the defense and third-party defenses presentations and nothing contained in the court's memorandum is intended to foreclose the defendant of its opportunity to be heard because what may now be reasonable and logical inferences from the evidence may be shown to be something entirely different. Nakamura v.

FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 2010).

The findings of fact made at the end of trial may differ somewhat from those the court made after the close of the plaintiffs' case-in-chief for the purpose of the defense Rule 41(b) motion since then it still awaited the presentations of the defendant and third-party defendant; since nothing contained in the court's Rule 41(b) memorandum was intended to foreclose the defendant and the third-party defendant of their opportunity to be heard; and since what may then have been reasonable and logical inferences from the evidence might later be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 121 & n.1 (Chk. 2010).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid dismissal. To make out a prima facie case, the party carrying the burden of proof must provide enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Peter v. Jessy, 17 FSM R. 163, 170 (Chk. S. Ct. App. 2010).

Once the plaintiffs concluded their case-in-chief and the defendants moved for a Rule 41(b) dismissal for failure upon the facts and law to show a right to relief, the court as trier of the facts then had the authority to determine the facts and render judgment against the plaintiff or could decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiffs, the court is required to make findings of fact as provided in Rule 52(a). Peter v. Jessy, 17 FSM R. 163, 170 (Chk. S. Ct. App. 2010).

In ruling on a 41(b) motion to dismiss, the trial court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but draws permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the case dismissed. Even if a plaintiff makes out a prima facie case, the court as the trier of fact, may, in assessing the evidence on a Rule 41(b) motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies. In weighing the evidence, the trial court is required to view the evidence with an unbiased eye, without any attendant favorable inferences, but it is also required to sift and to balance the evidence, and to give the evidence such weight as it deems fit. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Once a plaintiff has finished presenting evidence during her case-in-chief, a defendant may, without waiving its right to present evidence if the motion is not granted, move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court, as the factfinder, may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 (Chk. 2010).

Rule 41(b) permits a defendant to move for judgment as a matter of law after the plaintiff has completed the presentation of plaintiff's evidence. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 249 (Yap 2010).

Since Rule 41(b) permits a motion to dismiss – a motion for a judgment that upon the facts and the law the plaintiff has shown no right to relief – to be made after the close of the plaintiff's evidence and before the defendant's evidence, a motion for judgment as matter of law made after trial cannot be made under Rule 41(b) because, as a Rule 41(b) motion, it comes too late. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 52(b) motion is one that asks the court to amend the findings of fact that the court has already made as required by Rule 52(a). The Rule 52(b) term "motion for judgment," when referring to a motion made after the start of trial, refers to a Rule 41(b) motion, not to a motion made after closing arguments. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 41(b) motion after the plaintiff has completed the presentation of plaintiff's evidence can be written or oral because motions, unless made during a hearing or trial, must be made in writing. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Rule 41(b) permits a motion to dismiss – a motion for a judgment that upon the facts and the law the plaintiff has shown no right to relief – to be made after the close of the plaintiff's evidence and before the defendant's evidence. But a similar "Rule 41(b)" motion cannot be made after trial because, as a Rule 41(b) motion, it comes too late. Rule 41(b)'s purpose is to allow a trial court, once the plaintiff has presented its evidence, to find for the defendant and render judgment for the defendant thereby relieving the defendant of the burden of putting on a defense or presenting any evidence since, based on the evidence already presented, the defendant will prevail anyway. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

A contention that the trial court erred by not granting a party's motion to dismiss the case after the plaintiff had presented its case-in-chief is baseless when the trial court decision is affirmed on its merits. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

When a Rule 41(b) motion comes as a part of a closing argument, it comes too late and must be denied because now is the time to decide whether the plaintiff has shown a right to relief. If a plaintiff has truly not shown any right to relief then, after closing arguments, the defendant will be granted judgment in its favor on the merits, not a Rule 41(b) dismissal. Inek v. Chuuk, 19 FSM R. 195, 198 (Chk. 2013).

Under Civil Procedure Rule 41(b), once a plaintiff has finished presenting evidence during the plaintiff's case-in-chief, a defendant may, without waiving its right to present evidence if the motion is not granted, move for a dismissal on the ground that upon the facts and the law the plaintiff has not shown any right to relief. The court, as the fact-finder, may then either determine the facts and render judgment against the plaintiff or it may decline to render any judgment until the close of all the evidence. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

When a defendant has moved for dismissal after the plaintiff has completed its evidence, the court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but can draw permissible inferences, and if the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the plaintiff's case dismissed. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

Even if the plaintiff has made out a prima facie case, the court, as the trier of fact, may weigh the evidence, resolve any conflicts in the evidence, and decide for itself where the preponderance of the evidence lies and, and, based on where the preponderance lies, grant a Rule 41(b) motion to dismiss. The court must view the evidence with an unbiased eye, without any attendant favorable inferences and must sift and balance the evidence and give it such weight as it deems fit. George v. Palsis, 20 FSM R. 111, 115 (Kos. 2015).

When the plaintiff had the burden to prove by a preponderance of the evidence that his employer's termination of his employment was not for just cause and he failed to do so, he has not shown upon the facts and the law a right to relief and the defendants' motion to dismiss will therefore be granted. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

A plaintiff has failed to present even a prima facie case when, although necessary elements of his causes of action were that a wrongful act caused damages in some amount that the court can reasonably calculate, he did not proffer any evidence about the amount of damages he allegedly suffered on any of his asserted causes of action. Reasonably calculable damages must be shown as part of a prima facie case. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

If a plaintiff does not make out a prima facie case for all the elements of his cause of action during his own case-in-chief, then the defendants do not need to present any further evidence in order to be entitled to a Rule 41(b) dismissal at the close of the plaintiff's evidence. And, even if a prima facie case is presented but the preponderance of the evidence is such that judgment can only be awarded to the moving defendants, the defendants have no need to put on a case-in-chief. George v. Palsis, 20 FSM R. 174, 178 (Kos. 2015).

– Dismissal – Before Responsive Pleading

A motion under FSM Civil Rule 12(b) to dismiss for failure to state a claim upon which relief may be granted maybe upheld only if it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Mailo v. Twum-Barimah, 2 FSM R. 265, 267 (Pon. 1986).

A motion to dismiss for failure to state a claim for which relief can be granted brought under FSM Civil Rule 12(b)(6) will be granted 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. In making its determination the court is to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. Jano v. King, 5 FSM R. 388, 390 (Pon. 1992).

A motion under FSM Civil Rule 12(b) to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support. Faw v. FSM, 6 FSM R. 33, 37 (Yap 1993).

A motion to dismiss, unlike a pleading, must state with particularity the grounds for dismissal, be made before pleading, and be argued with clarity and relevance. In re Parcel No. 046-A-01, 6 FSM R. 149, 152 (Pon. 1993).

A motion to dismiss is not to be granted unless it appears to a certainty that the non-moving party is entitled to no relief under any state of facts which could be proved in support of the claim, and if on the motion to dismiss matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Etscheit v. Adams, 6 FSM R. 365, 386 (Pon. 1994).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Punitive damages are a derivative, not an independent cause of action, and must rest upon some other, underlying cause of action because it is merely an element of damages in that cause of action. Thus, if all other causes of action are dismissed then punitive damages must necessarily also be dismissed. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A complaint should not be dismissed and a party precluded from relief because a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

A motion to dismiss that contains matters outside the pleadings shall be treated as a motion for

summary judgment. Wainit v. Weno, 7 FSM R. 121, 122 (Chk. S. Ct. Tr. 1995).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court's review is limited to the complaint's contents and the court must assume the facts alleged therein are true and view them in the light most favorable to the plaintiff. Dismissal can only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

Averment of a foreign judgment states a claim upon which relief could be granted. Allegations that the foreign judgment was obtained without notice are outside the complaint and cannot be considered in evaluating a Rule 12(b)(6) motion to dismiss. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A motion to dismiss for failure to state a claim will be granted only if it appears to a certainty that no relief can be granted under any state of facts that could be proven in support of the claim, and a court must assume that the facts alleged in the complaint are true, and the facts and inferences drawn from the complaint must be viewed by the court in the light most favorable to party opposing the motion to dismiss the complaint. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

In ruling on a Rule 12(b) motion to dismiss, a court assumes the allegations in the complaint are true and gives the plaintiff the benefit of all reasonable inferences. A motion to dismiss for failure to state a claim may thus be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of that claim. Chuuk v. Secretary of Finance, 7 FSM R. 563, 569-70 (Pon. 1996).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

A motion to dismiss should not be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

A court evaluates a motion to dismiss for failure to state a claim only on whether a plaintiff's case has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court deciding such a motion must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Under Rule 4(j) a complaint that has not been served within 120 days of being filed can only be dismissed upon motion or the court's own initiative. Service made after 120 days but before a motion or court initiative to dismiss is good service and dismissal will not be granted on a later motion. Alik v. Moses, 8 FSM R. 148, 151 (Pon. 1997).

In evaluating a motion to dismiss, a court must accept as true the allegations in the complaint. Relief should be granted only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 296 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to serve the summons and complaint on a foreign defendant within 120 days as required by FSM Civil Rule 4(j) or pursuant to one of the alternative methods for service in a foreign country allowed by FSM Civil Rule 4(i) the court will dismiss the complaint against without prejudice. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to timely serve a defendant, a motion to dismiss without prejudice will be granted. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 484 (Pon. 1998).

In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the complaint are true and view them in the light most favorable to the plaintiff. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Because failure to make proof of service does not affect the validity of the service, a motion to dismiss for a defect in a return of service will be denied. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

For purposes of the motion to dismiss, the plaintiff has the burden of showing a prima facie case of personal jurisdiction, and the allegations in the complaint are taken as true except where controverted by affidavit, in which case any conflicts are construed in the non-moving party's favor. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. AHPW, Inc. v. FSM, 9 FSM R. 301, 303 (Pon. 2000).

Whether Pohnpei's power to regulate trochus means that any action which has an arguably regulatory effect on trochus cannot constitute an anticompetitive practice is an issue for trial, and a motion to dismiss in this respect must be denied. AHPW, Inc. v. FSM, 9 FSM R. 301, 304 (Pon. 2000).

When a defendant draws its own legal conclusions from the complaint's alleged facts, its comments are not a sufficient basis on which to dismiss a complaint, and the facts as alleged present issues for trial because the court must take the complaint's allegations as true. AHPW, Inc. v. FSM, 9 FSM R. 301, 305-06 (Pon. 2000).

The court lacks jurisdiction over the subject matter or the complaint does not state a claim or cause of action upon which relief can be granted when it asks the court to hold the removal of the Speaker and Vice-Speaker null and void. Christlib v. House of Representatives, 9 FSM R. 503, 506-07 (Chk. S. Ct. Tr. 2000).

A third-party due process claim against the Land Commission will be dismissed when, although the Land Commission was named as a third-party defendant in the caption, it was never served with a Third-Party Complaint and Summons in accordance with the Kosrae Civil Procedure Rules. Jonas v. Paulino, 9 FSM R. 519, 521-22 (Kos. S. Ct. Tr. 2000).

A party is precluded from moving to dismiss on the basis of a stale summons and amended complaint, since by not filing a Rule 12(b) motion on the point, nor asserting it in his answer to the amended complaint, he has waived any defect in this regard. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

In considering a motion to dismiss, a court must assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. A motion to dismiss for failure to state a claim for which relief can be granted will be granted only if it appears to a certainty that no relief can be granted under any set of facts which could be proven in support of the claim. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556 (Pon. 2000).

A court will not dismiss a case for failure to exhaust administrative remedies when to do so would require the plaintiff to pursue relief through an unconstitutional procedure. Udot Municipality v. FSM, 9 FSM R. 560, 563 (Chk. 2000).

A motion, styled a motion to strike (under Rule 12(f)), that may more accurately be characterized as one to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), shall, when matter outside the pleading is presented to and not excluded by the court, be treated as one for summary judgment and disposed of as provided in Rule 56. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52-53 (Chk. 2001).

Dismissal is only appropriate if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 67 (Pon. 2001).

When a party moving to dismiss for failure to state a claim states that an agreement is referred to in the complaint, and that by attaching a copy to its motion, it does not intend to present matter outside the pleadings, regardless of intent, the agreement is "matter outside the pleadings" under Rule 12(b)(6), and the court will therefore treat the motion to dismiss as one for summary judgment under Rule 56, as is expressly provided for by Rule 12(b). Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

A defense of failure to state a claim upon which relief can be granted may be made in a pleading, or in a motion for judgment on the pleadings, or at the trial on the merits. There is no requirement that such a

defense only be raised, if at all, in a motion to dismiss filed prior to filing a responsive pleading. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 23 (Pon. 2002).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court's review is limited to the complaint's contents and the court must assume the facts alleged therein are true and view them in the light most favorable to the plaintiff. Dismissal can only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 24 (Pon. 2002).

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted must be made before the defendant files its answer to the complaint and when a defendant did not file such a motion until almost seven months after it filed its answer, the motion must be denied on that ground. William v. Director of Public Works, 11 FSM R. 45, 46-47 (Chk. S. Ct. Tr. 2002).

When it appears that triable issues of fact would still exist that would compel denial of the motion even if the court were to convert the motion from one to dismiss for failure to state a claim to one for summary judgment because matter outside the pleadings was included, the court will instead exercise its discretion to set the case for trial at the earliest opportunity. William v. Director of Public Works, 11 FSM R. 45, 47 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM R. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

When a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed and can be dismissed without prejudice, but because a dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a defendant has received sufficient notice of all causes of action and had a fair and adequate opportunity to defend, and when the plaintiff later properly served defendant with a copy of the summons and complaint, the court will not dismiss the case under Rule 12(b)(5). Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

On a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept plaintiff's allegations to be true. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

A complaint will not be dismissed for failure to state a claim upon which relief may be granted when, if the plaintiff is able to prove his allegations that his termination was wrongful and violated the FSM Constitution since he had no opportunity for a hearing and was not provided sufficient notice of his rights at the time of the termination, the plaintiff would be able to establish a violation of his rights secured under the FSM Constitution. Reg v. Falan, 11 FSM R. 393, 400 (Yap 2003).

A cross-claim that sets out a legal conclusion and that does not provide a short and plain statement of the facts on which the legal conclusion rests, lacks sufficient factual allegations and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

Each of the familiar elements of a cause of action for negligence – duty, breach of duty, proximate cause, and damages – should be alleged, and a negligence counterclaim that does not is deficient and a

motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

In ruling on a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), the court must presume the non-moving party's allegations to be true, and view inferences drawn from the allegations in a light most favorable to the non-moving party. Dismissal may only be granted if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577-78 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for failure to state a claim will be denied when it is more in the nature of an affirmative defense that requires that certain facts be proven and certain rulings of law made before it can be effective. A motion to dismiss for failure to state a claim must be based solely on the plaintiffs' allegations in their complaint. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

An action against a promissory note's cosigner is one for which a court can grant relief. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

That a promissory note's co-signer did not receive the loan proceeds, but the other signers did and they spent it, is not a defense to an action on the note or a ground for dismissal of the case against the co-signer. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

Defendant co-signer's allegation that he did not sign the promissory note is not a ground for dismissal but a disputed fact which must be proven at trial. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

When a defendant's motion to dismiss has been denied, he has 10 days within which to file his answer to the amended complaint. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

When reviewing arguments that a plaintiff has failed to state a claim upon which relief can be granted, the standard is onerous: a claim will not be dismissed on this ground unless it can be said, to a certainty, that no relief can be granted under any facts that could be proven by the plaintiff in support of its claims. Furthermore, the court must assume that the facts alleged in the complaint are true, and it must view the facts and inferences drawn from the complaint in the light most favorable to the party opposing the motion to dismiss. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 & n.2 (Pon. 2003).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will

a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91-92 (Pon. 2003).

When there is a factual dispute on the plaintiff's unjust enrichment claim, and when it cannot be said with certainty that no relief can be granted if the facts alleged by the plaintiff are proven, the claim cannot be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

When the plaintiff alleges facts regarding a defendant having familial ties that gave him either inside information or favorable treatment in the proceeding below that dissolved the plaintiff's public land assignment, under the relevant standard of review, the tortious interference with contract claim cannot be dismissed at this point. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

Causes of action are dismissed when no relief could be granted on the allegations pled even if those allegations were proven. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

A defendant cannot file successive Rule 12 motions to dismiss that raise different defenses. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

To what extent a defendant can amend an existing motion to dismiss is unclear. However, when an amended motion to dismiss adds only a more detailed discussion of a case, which was cited in the original motion and thus already before the court, plus some other trivial changes, there is no real difference in defenses raised in each motion. Because of this and when the parties have proceeded, without discussion, on the basis that the amended motion is what is before the court, the court need not determine which is the operable filing. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

A court evaluates a Rule 12(b)(6) motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the case's facts or merits. The court's review is limited to the complaint's contents. A motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proven in support of the claim, and in making its determination, the court must assume that the complaint's allegations are true and view all reasonable inferences drawn therefrom in the light most favorable to the plaintiff. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

When no responsive pleading has been filed in a case, but only a Rule 12(b) motion to dismiss, which is not a responsive pleading, has been filed, the plaintiff could have amended his complaint without leave of court at anytime before the court acted on the motion to dismiss. Since he chose not to do so, the court will not grant him leave to do now what he has had the opportunity to do for over a year. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

An answer is a pleading, and a party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Lack of personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. An amended answer containing a motion to dismiss served five days after service of the original answer, is well within the 20-day period specified in Rule 15(a) for amending a pleading as a matter of right. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

Motions to abstain cannot be brought before the defendants have pled by filing an answer. The only motions to dismiss that a defendant may file before answering the complaint are those based on 1) lack of

subject matter jurisdiction, 2) lack of personal jurisdiction, 3) improper venue, 4) insufficiency of process, 5) insufficiency of service of process, 6) failure to state a claim upon which relief can be granted, or 7) failure to join a party under Rule 19. McVey v. Etscheit, 13 FSM R. 473, 476-77 (Pon. 2005).

Defendants are allowed to file only one Rule 12(b) motion to dismiss and any ground not included in that one motion (with certain exceptions) is waived. McVey v. Etscheit, 13 FSM R. 473, 477 (Pon. 2005).

In ruling on a motion to dismiss, the court assumes the truth of the allegations, with all reasonable inferences to be made in the plaintiff's favor. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A complaint fails to state a claim against both Congress and the FSM when, accepting as true the fact that Congress provided the funding for the school truck operated by the Chuuk Department of Education, that fact alone is insufficient as a matter of law to confer liability upon either Congress or the FSM for the injury sustained when someone fell off the back of the truck. The alleged injury is too remote. Thus, no relief against the Congress and the FSM could be granted even if the allegations pled in the complaint were proven. The action will therefore be dismissed. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A case may be dismissed for insufficiency of service of process. Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, a court will, when a defendant has moved for dismissal for insufficiency of service of process, often quash service instead of dismissing the action and order that the service be repeated within a certain time. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. A court evaluates a motion to dismiss for failure to state a claim only on whether the complaint adequately states the plaintiff's case, and does not resolve the case's facts or merits. A court deciding such a motion must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

When none of the cited administrative remedies were remedies that could address the plaintiff's claimed injury and since it is not necessary to exhaust administrative remedies before filing suit in court when it would be futile to try to do so, failure to exhaust one's administrative remedies would thus not be a ground for the case's dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A contention that a corporation does not have the proper foreign investment permit to allow it to do the type of business that the movants suppose it would conduct, may be a defense that the movants can raise in an answer, but it is not a ground for dismissal at the pre-answer stage on the contention that the corporation lacked legal capacity. Only if it lacked the power to sue and be sued could its complaint be dismissed at this stage for the lack of legal capacity. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

In determining whether a plaintiff has failed to state a claim, the court must accept as true the allegations made in his complaint and will grant the defendants' motion to dismiss only if it appears to a certainty that no relief could be granted under any set of facts which could be proven in support of the claim. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006).

When matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss shall be treated as one for summary judgment, but when the parties have presented matters outside the pleadings and neither party desires summary adjudication or that the court convert the motion, the court may exercise its discretion to exclude the matters outside the pleadings and treat the motion as one to dismiss. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006). Annes v. Primo, 14 FSM R. 196, 200

(Pon. 2006).

In ruling on a motion to dismiss, the court must accept as true the plaintiff's version of the facts. Thus the court cannot dismiss a case on the ground the plaintiff's facts are incorrect, especially when the facts upon which the defendants urge dismissal are not dispositive. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

Although the complaint is not artfully drafted, the court will not dismiss the claims made under a count headed "due process" simply because the count is "overstuffed" since notice pleading requires only a short and plain statement of the claim and fair notice of the factual wrong on the basis of the facts asserted. A plaintiff need not even advance a legal theory. Nor must the theory, if advanced, be correct. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When the plaintiff asserts a tort claim for assault and battery by the police officers, although the claim should have been set forth independently, the facts alleged in the complaint were sufficient to place the defendants on notice of an assault and battery claim. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When a plaintiff alleges that he was arrested without cause, not that the officer failed to inform him of the grounds for the arrest, the difference in the two allegations is more than semantic, because a plaintiff may claim that an arrest was without just cause even when the arresting officer recites the grounds for the arrest. Whether there was cause for the arrest presents a factual matter that cannot be resolved at the Rule 12(b)(6) motion stage of the proceedings. Annes v. Primo, 14 FSM R. 196, 203-04 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

A plaintiff's failure to specify the appropriate level of care and to prove that the level of care provided by the state was deficient does not warrant dismissal of his claim when the plaintiff has alleged injury by a state police officer and failure to train by the state because the plaintiff must be given the opportunity to put forth evidence in support of his claim and a motion to dismiss may be granted only if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

An argument that the plaintiff is responsible for any injury he has suffered because he became combative with the police officer is an attempt to engage the court in a factual analysis that is not appropriate at the Rule 12(b)(6) motion for dismissal stage. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although punitive damages claims against the state will be dismissed, when the state is not the only defendant, an unchallenged punitive damage claim against a police officer will not be stricken. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the complaint are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

When, accepting the plaintiffs' allegations as true, which the court must on a Rule 12(b)(6) motion to dismiss, the plaintiffs state a claim that their civil rights were violated by an illegal act under the color of law, their case will not be dismissed. A determination of whether a case arises under the national constitution or national law is based on the plaintiff's statement of his case in his complaint, and, although a state court may exercise jurisdiction over such cases, a plaintiff has the constitutional right to bring such claims in the

national court. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

A court evaluates a motion to dismiss for failure to state a claim only on whether a plaintiff's case has been adequately stated in the complaint, and does not resolve the facts or merits of the case. A court deciding such a motion must assume that the complaint's factual allegations are true and view them in a light most favorable to the plaintiff, and then dismiss the complaint only if it appears certain that no relief could be granted under any facts which could be proven in support of the complaint. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

When, viewing the allegations in the light most favorable to the plaintiffs, the complaint does not state a civil rights cause of action and when no other basis for subject matter jurisdiction, such as diversity of citizenship, is alleged, the complaint does not state a claim upon which the FSM Supreme Court can grant relief, and the defendant's motion to dismiss will be granted. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

A Rule 12(b)(6) motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. In reviewing a motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the pleading are true, and view them in the light most favorable to the claimant. FSM v. Kana Maru No. 1, 14 FSM R. 368, 371-72 (Chk. 2006).

A motion to dismiss for failure to state a claim will be denied when it is more in the nature of an affirmative defense that requires that certain facts be proven and certain rulings of law made before it can be effective since a motion to dismiss for failure to state a claim must be based solely on the allegations in the pleading. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

If the pleading shows that the claimant is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the pleading is sufficient. A claim will not be dismissed and a party precluded from relief because the claimant's lawyer has misconceived the proper legal theory of the claim, and a party may be granted the relief to which he is entitled even if the party has not demanded such relief in the party's pleadings. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When the arguments raised in support of a motion to dismiss for the failure to state a claim are in the nature of defenses to that count and require that certain facts be proven and certain rulings of law made first, the court therefore cannot say that there are no set of facts that could be proven in support of the claim and the motion to dismiss will be denied. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

Civil Rule 8(a)'s purpose is to put the opposing party on notice of the nature of the claim against it. Its pleading requirements are interpreted liberally, and a claim that alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Thus, while a decision by policy-making officials causing the alleged violations is a necessary element of the claim, a count claiming due process violations satisfies the pleading requirement when a set of facts could be proven in regard to the vessel's stop and seizure and later detention that would support the due process claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must

await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

While a policy-making official's decision causing the alleged violations is a necessary element of a due process claim, that, at the litigation's start, the claimant might not know which policy-making official decided what does not mean that he has failed to state a claim. It may be that after discovery and trial, he might not be able to prove this element and so his claim will fail, but before the government has answered, all he needs to do is put the government on notice as to the claim's nature. Thus the court cannot say that no set of facts that could be proven would not support this claim and will therefore not dismiss it for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A claim that alleges that the claimants and their agents have been harassed by the government will not be dismissed for the failure to state a claim because, although there is no tort or cause of action denominated as "harassment" there are a number of torts that have harassment as a significant component and if a pleading shows that the claimant is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the pleading is sufficient and the claim will not be dismissed because the claimant's lawyer has misconceived the proper legal theory of the claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A motion to strike a punitive damages claim against the FSM on the ground that, under FSM law, punitive damages are not recoverable against the national government on any theory, although styled as a motion to strike under Rule 12(f), may more accurately be characterized as one (under Rule 12(b)(6)) to dismiss for failure to state a claim upon which relief can be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Rule 12(f) motions to strike may be used to strike from any pleading any insufficient defense. They cannot be used to "strike" legally insufficient claims, for which Rule 12(b)(6) is the appropriate vehicle. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

A Rule 12(f) motion to strike is neither an authorized nor a proper way to procure the dismissal of all or of a part of a complaint, or a counterclaim, or to strike affidavits. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and the motion may be granted only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. But when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the single legal issue presented is whether the defendant's regulations require it to make a demand for payment prior to denying port entry; when resolution of this issue will necessarily lead to a factual question: whether the defendant in fact made a demand for payment prior to threatening denial of, or denying, port entry; when the court cannot reach this factual question if it treats the motion as one to dismiss; and when both the dispositive questions may be resolved based on the pleadings and submissions already attached to the pleadings, the court will exercise its discretion to convert the Rule 12(b)(6) motion to one for summary judgment under Rule 56. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When reviewing a Rule 12(b) motion to dismiss for failure to state a claim, a court must assume that the facts alleged in the pleading are true, and view them in the light most favorable to the claimant. A Rule 12(b) motion to dismiss cannot be granted unless it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute

of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

If a statutory remedy provides as a condition precedent to enforce the remedy that it must be started within a prescribed time, it is jurisdictional and the statute of limitations may be raised in a Rule 12(b)(6) motion to dismiss. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 172 (Chk. 2007).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. Jano v. Fujita, 15 FSM R. 405, 407 (Pon. 2007).

In ruling on a motion to dismiss, the court must assume the truth of the allegations in the complaint, with the benefit of all reasonable inferences to be given to the plaintiff. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

A dismissal for failure to state a claim under Kosrae Civil Procedure Rule 12(b)(6) will be treated as a summary judgment if it presents matters outside the pleadings. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

On a motion to dismiss brought under FSM Civil Rule 12(b), all of the allegation of the complaint are taken as true, and viewed in the light most favorable to the claimant. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 2 (Pon. 2008).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

On a Rule 12(b)(6) motion, the well-pled facts are accepted as true, with all inferences to be made in favor of the party opposing the motion to dismiss. FSM v. Koshin 31, 16 FSM R. 15, 18 (Pon. 2008).

When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

When the defendants' counterclaim for wrongful arrest is dismissed and the defendants' claim for punitive damages is based on the claim for wrongful arrest, the punitive damages claim is likewise dismissed because punitive damages are derivative and must rest on another underlying cause of action. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

A motion to dismiss under Rule 12(b) proceeds on the assumption that the allegations of the complaint

are true. Similarly, the complaint's allegations are deemed true for purposes of a motion to remand a removed case to the state court on the basis that the FSM Supreme Court lacks subject matter jurisdiction. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

A motion to dismiss for lack of standing is a claim that the court lacks subject matter jurisdiction and is properly filed in lieu of an answer under Rule 12(b)(1), or as a motion to dismiss under Rule 12(h)(3), which can be raised at any time, even after judgment. It is the plaintiff's burden to show that the court has jurisdiction, and that a colorable claim exists. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

It is within the court's discretion to allow or disallow affidavits and other matters outside the pleadings to be brought in when considering a motion to dismiss challenging the court's subject matter jurisdiction. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

In ruling on a 12(b)(6) motion, the court is limited to evaluating whether a plaintiff's case has been adequately stated in the complaint. It is not appropriate for the court to resolve factual disputes or the case's merits; rather, the court must presume the non-moving party's allegations to be true, and view inferences drawn from the allegations in a light most favorable to the non-moving party. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Therefore, when there are significant issues of fact, the motion to dismiss must be denied. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

The court has the discretion to include or exclude matters outside the pleadings on a motion to dismiss for failure to state a claim, and if matters outside the pleading are presented to and not excluded by the court, the motion is treated as one for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

Unlike a 12(b)(6) motion to dismiss, a 12 (b)(1) motion to dismiss may not be converted into a motion for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.2 (Chk. S. Ct. Tr. 2008).

If the court converts a motion to dismiss to one for summary judgment, the parties must be given a reasonable opportunity to prepare so that no party is taken by surprise, and if issues of fact remain after the conversion, the court will deny the motion and set the case for trial. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218, 221 n.4 (Chk. S. Ct. Tr. 2008).

The issue of standing is a threshold issue going to a court's subject matter jurisdiction and therefore standing is properly challenged in the form of a motion to dismiss brought under Rule 12(b)(1) because when a plaintiff does not have standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the facts establish only two defendants had contracts with the plaintiff, the plaintiff's complaint alleging that all defendants breached a contract with the plaintiff will be dismissed with respect to all defendants except the two. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

When a civil rights counterclaim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When a movant has not shown, as a matter of law, that the cause of action should be dismissed, and has cited no authority for the proposition, the motion will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

Generally, a motion for the FSM Supreme Court to abstain from all or part of a case should proceed as a post-answer motion, and not a motion in lieu of answer under FSM Civil Procedure Rule 12(b) since abstention is not one of the enumerated grounds for a Rule 12(b) motion. But when, in one of those rare instances, where the material facts are not in dispute and an answer would not help to identify or to narrow the factual issues since only legal matters are contested, it may be appropriate to permit an abstention motion without an answer. Narruhn v. Chuuk, 16 FSM R. 558, 561 (Chk. 2009).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings, a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim, but when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule, such as when aspects of what constitutes well-pleaded allegations under Rule 12(b) have not been previously considered. Arthur v. Pohnpei, 16 FSM R. 581, 593 n.8 (Pon. 2009).

Although the court may take judicial notice of documents filed in earlier related cases without converting the Rule 12(b)(6) motion to a summary judgment motion, the court, when it has given notice in open court that it would consider the motions as summary judgment motions, will follow that course. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Since civil conspiracy is not a cause of action unless an underlying civil wrong has been committed and caused damage, when certain tort counterclaims have survived dismissal motions, the civil conspiracy counterclaim, limited to those underlying torts, will survive a motion to dismiss. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex

rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

The legal standard for the dismissal of a counterclaim is the same as that for the dismissal of a complaint. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A counterclaim may be dismissed as a matter of law for two reasons: 1) lack of a cognizable legal theory or 2) insufficient facts under a cognizable legal theory. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612-13 (Yap 2009).

An ad damnum clause that is properly considered as a part of the counterclaimants' prayer or demand for the relief sought under Rule 8(a)(3), and not as a part of the counterclaim's factual basis under Rule 8(a)(2), may be disregarded when testing the sufficiency of a counterclaim since the court will only award relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A counterclaim cannot be dismissed simply because the counterclaimant has failed to state precisely all elements that give rise to the alleged legal basis for recovery; otherwise, a party's counterclaim could be lost by its attorney's failure to draft the counterclaim properly despite the counterclaim's potential validity and it would also effectively eliminate the "notice" pleading theory embedded in the Civil Procedure Rules. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A defendant's request for a dismissal for a plaintiff's breach of contract is actually not a claim for dismissal, but rather a counterclaim as the defendant argues that the plaintiff breached the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

A Kosrae Civil Rule 12(b)(6) motion to dismiss for failure to state a claim for which relief can be granted will be granted 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. In making its determination the court is to assume the allegations in the complaint to be true and give the plaintiff the benefit of all reasonable inferences. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

If matters outside the pleadings are referred to or presented and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted will be treated as one for summary judgment under Rule 56. Regardless of intent, if a document is presented that is outside the pleadings, the motion to dismiss will be treated as one for summary judgment under Rule 56 as provided in Kosrae Rules of Civil Procedure Rule 12(b). Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

When the plaintiff has standing, the court has jurisdiction over the plaintiff's challenge of a statute's constitutionality which thus states a claim for which the court may grant relief if the plaintiff's contentions are correct. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 & n.3 (Pon. 2010).

A court may grant a Rule 12(b) motion to dismiss for failure to state a claim upon which relief may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

When the court dismisses causes of action for the failure to state claims on which the FSM Supreme Court can grant relief and the remaining causes of action are all based in tort, which are properly the domain of state law, the court will grant the motion to dismiss with regard to the rest of the complaint because without at least one viable national law cause of action from which to hang, there is no pendent jurisdiction for the state law issues. Ladore v. Panuel, 17 FSM R. 271, 276 (Pon. 2010).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied

are taken as false, and judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

If, when a judgment that a party has paid is reversed on appeal or otherwise set aside, that party then has a restitution or unjust enrichment cause of action, then it follows that when a judgment has been affirmed on appeal and not otherwise set aside, that party does not have cause of action for restitution or unjust enrichment for sums paid on the judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

If a plaintiff has not had the judgment set aside or reversed, then the plaintiff's unjust enrichment claim fails to state a claim on which relief can be granted since the plaintiff cannot allege that it would be inequitable for the defendant to retain the benefit without paying for it because the plaintiff cannot truthfully allege that the judgment has been set aside. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

When the plaintiffs' other claim for relief is the injury they allege they suffered as a result of a judgment, their injury claims are premised on that judgment being found inequitable and unenforceable or otherwise invalid and when their claim that the judgment was invalid or unenforceable has failed, these injury allegations fail to state a claim for which the court can grant relief. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

Usually when service is defective, the court will either dismiss without prejudice and with leave to refile or quash service and grant the plaintiff a number of days within which to effect proper service. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

When the respondent filed a proper and timely motion to dismiss for lack of proper service together with a dispositive motion, the inadequate service will not, because of the importance of the case, bar a ruling on the alternative dispositive motion to dismiss for the failure to state a claim. The court will decide the dispositive motions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If it were clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the defense of statute of limitations, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Aunu v. Chuuk, 18 FSM R. 48, 50-51 (Chk. 2011).

A court must take the plaintiffs' allegations as true when considering a Rule 12(b) motion to dismiss. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

While the court may permit matter outside the pleadings to be considered, thus converting a Rule 12(b)(6) motion to dismiss for failure to state a claim to a Rule 56 summary judgment motion, the motion will be denied when that does not seem advisable until after the relevant matters have been put before the court and the record properly developed. When that has been done, any party is free to move for summary judgment on any or all claims still outstanding. Marsolo v. Esa, 18 FSM R. 59, 66-67 (Chk. 2011).

It is doubtful whether a movant, who is a defendant only in the second cause of action, has standing to move to dismiss the third or the first cause of action. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

An FSM Civil Rule 12(b)(6) motion to dismiss may, at the pleader's option, be made either as a motion before the answer or as part of the answer. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

In reviewing a motion to dismiss, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

If matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss must be treated as one for summary judgment; otherwise, only the well-pled or well-pleaded facts are to be

accepted as true. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

Since due process and civil rights limit government but do not require any minimal level of security, much less other services and since the plaintiffs allege that the government defendants did nothing, if, as the plaintiffs suggest, the business on the causeway obtained a business license from U and then operated that business to permit consumption of alcohol without an appropriate alcoholic beverages consumption license in violation of state law, the fault is with the business, not with U, and the case will be dismissed for failure to state a claim because, even if all the facts alleged in the complaint can be proved true, no arrangement of any of these facts would give rise to a cause of action upon which this court could grant relief against either defendant. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

When a motion to dismiss presents matters outside the pleading and the court does not exclude those matters, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties will be given reasonable opportunity to present all material made pertinent to such a motion by that rule. When neither party has propounded discovery during the eight months after the civil action's start, but the amended complaint contained copious amounts of exhibits, the parties have had reasonable opportunity to present such evidence. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

For the purpose of Rule 12(b)(6) motions to dismiss, the court must accept the plaintiff's allegations as true with all reasonable inferences to be made in her favor since she is the party opposing the motion to dismiss. The court will then grant dismissal only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of her claim. Jacob v. Johnny, 18 FSM R. 226, 229 (Pon. 2012).

When a plaintiff has not made any allegations that a defendant official directed or participated in the alleged acts that she complains of, she has not stated a claim against him in his individual or personal capacity and that defendant, in his individual capacity only, will be dismissed from the action. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

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. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 379 (Kos. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

The failure to deny an averment in a pleading constitutes an admission only for averments in a pleading to which a responsive pleading is required. A motion to dismiss is not a pleading. Perman v. Ehsa, 18 FSM R. 452, 454-55 (Pon. 2012).

A motion to dismiss for failure to state a claim should not be granted unless, presuming that the plaintiff's allegations are true and giving the plaintiff the benefit of all reasonable inferences, it appears to a certainty that no relief could be granted under any state of facts that can be proved in support of the claim. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

A court will understand a defendant's assertion in its motion to dismiss that the plaintiffs do not make any specific allegations against it to mean that the plaintiffs fail to state a claim against that defendant for which the plaintiffs may be granted relief and therefore the complaint against it ought to be dismissed under Civil Procedure Rule 12(b)(6). Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 574 (Pon. 2013).

A court must accept the facts as alleged in the plaintiffs' complaint as true when it considers a Rule 12(b)(6) motion to dismiss. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

Allegations that the process leading to the Miju Mulsan lease was invalid and that therefore Miju Mulsan does not have any rightful interest in the leasehold or any rights under the lease do state a claim for which the court may grant the plaintiffs relief. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

A motion to dismiss for failure to state a claim will be granted only if it appears to a certainty that no relief can be granted under any state of facts that could be proven in support of the claim, and a court must assume that the facts alleged in the complaint are true, and the facts and inferences drawn from the complaint must be viewed by the court in the light most favorable to the party opposing the motion to dismiss the complaint. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

Res judicata is listed as an affirmative defense under Rule 8(c), and, as such, it must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Res judicata can be raised in the context of a Rule 12(b)(6) motion when the prior action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

When the plaintiff's attorney served the summons and complaint, service of process of those documents was insufficient under Rule 4(c)(1) because the attorney is deemed as a party to the action. The failure to effect service of the summons and complaint on the defendant makes the case subject to dismissal under Rule 12(b)(5), but because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, often the service will be quashed instead of dismissing the action. That way only the service need be repeated. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract

to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

When the FSM Attorney General was never served, service of process has not been effected on the FSM national government nor has service of process been effected on the national government officers on whom the complaint and summons were served because the additional service on the FSM Attorney General was not made. Failure to satisfy this service requirement makes the case against FSM defendants subject to dismissal under Rule 12(b)(5). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

Because, unlike most Rule 12(b) dismissals, a Rule 12(b)(5) dismissal is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on which relief may be granted. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

When properly raised, personal jurisdiction is an important threshold issue since a court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 (Yap 2015).

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 243-44 (Pon. 2015).

A motion to dismiss for failure to state a claim upon which relief can be granted, may not be granted unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. Ramirez v. College of Micronesia, 20 FSM R. 254, 260 (Pon. 2015).

The facts alleged by the party asserting the claim sought to be dismissed are to be taken as true, and the court must view those facts and the inferences drawn therefrom in the light most favorable to the party opposing the motion to dismiss. The court evaluates the motion to dismiss only on whether the complaint has adequately stated the plaintiff's claim, and does not resolve the facts or merits of the case. Ramirez v. College of Micronesia, 20 FSM R. 254, 260-61 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the face of the complaint. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284-85 (Chk. 2016).

Taking as true the facts alleged by the party asserting the claim sought to be dismissed and viewing these facts and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, the court may not grant a motion to dismiss unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. A court evaluates a motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

The court will grant partial declaratory relief requiring the resumption of the administrative proceedings, and will dismiss the plaintiff's petition with all counterclaims until the administrative remedies have been exhausted. If the plaintiff is not satisfied following the administrative proceedings' final decision, she may refile a petition in the court with new pleadings that reflect the administrative deficiency, but the court cannot grant further declaratory relief, and no common law causes of action can be heard. Eperiam v. FSM, 20 FSM R. 351, 357 (Pon. 2016).

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

A plaintiff's allegation of a defendant's failure to respond to the plaintiff's salutations; of projecting "bad vibes;" of purportedly not assigning an adequate work load; of a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the defendants' part, and as a result, falls short of a claim on which relief might be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

On a Rule 12(b)(6) motion to dismiss, only a well pled or well-pleaded facts are to be accepted as true and no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations, since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning; and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

In evaluating a motion to dismiss, a court must accept the complaint's allegations as true and should grant the motion only if it appears certain that no relief could be granted under any facts which could be proven in support of the claim. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

The court's power to dismiss, under Rule 12(b)(6) some of a plaintiff's claims (or to grant partial summary judgment, under Rule 56(c), when a Rule 12(b)(6) motion is converted to a summary judgment motion because matters outside the pleadings were considered), because, even when viewing the plaintiff's factual allegations in the light most favorable to the plaintiff, the complaint's factual allegations fail to state a claim on which relief can be granted, is too well established to merit discussion. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 & n.2 (Pon. 2016).

On a Rule 12(b)(6) motion to dismiss for failure to state a claim, only the well-pled or well-pleaded facts

are to be accepted as true. The court will not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno Municipality, 20 FSM R. 582, 585 (Chk. 2016).

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

On a Rule 12(b)(6) motion to dismiss, only the well pled or well-pleaded facts are to be accepted as true. No matter how artfully allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Conclusory allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

At the pleader's option, Rule 12(b) defenses may either be raised in a separate motion before pleading or may be raised in the responsive pleading. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

– Dismissal – By the Parties

Civil proceedings typically can be concluded by the parties without court action or approval of any kind pursuant to Rule 41 of the FSM Supreme Court's Rules of Civil Procedure. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Plaintiffs are permitted to dismiss an action without the order of the court provided they file a stipulation signed by all parties who have appeared in the action. Therefore where plaintiffs file a stipulation of dismissal including all but one defendant and later file another stipulation of dismissal with that one defendant a court may recognize that the plaintiffs have reached agreements with all defendants and enter the stipulated judgment and dismissal. Labra v. Makaya, 7 FSM R. 75, 76 (Pon. 1995).

There are two types of voluntary dismissal under Rule 41(a): dismissals under 41(a)(1) do not require a court order; dismissals under 41(a)(2) do. Subsection (a)(1) permits dismissal by notice of dismissal when the notice is filed before the filing of an answer or a summary judgment motion, whichever occurs first, or by the stipulation of all parties who have appeared in the action. Subsection (a)(2) governs all other circumstances when a plaintiff seeks to dismiss a lawsuit and applies when a defendant opposes dismissal. Under Rule 41(a)(2) an action will not be dismissed at the plaintiff's instance save upon court order and upon such terms and conditions as the court deems proper. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

A stipulated dismissal signed by the counsel who represented all the parties who had appeared in the case until then operates as a voluntary dismissal of the case without the need for further action. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Entry of a stipulated dismissal under Rule 41(a)(1)(ii) is effective automatically and does not require

judicial approval. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Settlement negotiations are not adequate grounds for dismissal of a matter. Generally when parties do settle a matter, they jointly request the court for dismissal. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

A Rule 41(a)(1) dismissal signed by all parties who appeared in the original action is ineffective when as a result of a consolidation order, other parties had appeared in the action. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

– Dismissal – By Plaintiff

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

When a party incurs considerable expense in preparation for trial and the other party seeks for dismissal, the court may specify the conditions under which dismissal will be allowed, but dismissal need not be accepted by a party who finds the conditions too onerous. Mailo v. Twum-Barimah, 3 FSM R. 411, 414 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. Mailo v. Twum-Barimah, 3 FSM R. 411, 415 (Pon. 1988).

Plaintiffs are permitted to dismiss an action without the order of the court provided they file a stipulation signed by all parties who have appeared in the action. Therefore where plaintiffs file a stipulation of dismissal including all but one defendant and later file another stipulation of dismissal with that one defendant a court may recognize that the plaintiffs have reached agreements with all defendants and enter the stipulated judgment and dismissal. Labra v. Makaya, 7 FSM R. 75, 76 (Pon. 1995).

There are two types of voluntary dismissal under Rule 41(a): dismissals under 41(a)(1) do not require a court order; dismissals under 41(a)(2) do. Subsection (a)(1) permits dismissal by notice of dismissal when the notice is filed before the filing of an answer or a summary judgment motion, whichever occurs first, or by the stipulation of all parties who have appeared in the action. Subsection (a)(2) governs all other circumstances when a plaintiff seeks to dismiss a lawsuit and applies when a defendant opposes dismissal. Under Rule 41(a)(2) an action will not be dismissed at the plaintiff's instance save upon court order and upon such terms and conditions as the court deems proper. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

The decision to grant or deny a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the court and unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

Consideration of the terms and conditions appropriate for dismissal under Rule 41(a)(2) centers on the interests of parties before the court, not on a party's procuring a strategic advantage in future litigation with a different plaintiff or plaintiffs. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

When the plaintiff and other defendant and the third-party defendant seek dismissal with prejudice and a defendant/third-party plaintiff opposes and when the third-party claim is solely for indemnification, the defendant/third party plaintiff would have no liability on which to base an indemnification claim if the case were dismissed with prejudice. Dismissal of the entire action is then appropriate. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

While Rule 42(a)(2) expressly provides protection against the dismissal of counterclaims, no such protection is provided for cross-claims, or for third-party claims. The pendency of the third-party claim for indemnification is thus not a bar to dismissal. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 209 (Kos. 2001).

Since a plaintiff cannot file a notice of dismissal in a case under Rule 41(a)(1)(i) when the adverse party has already served an answer, the court must therefore consider the petitioner's notice of dismissal filed after the respondent has served an answer to be a motion to dismiss. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

– Dismissal – Forum non Conveniens

A claim that civil matters should be dealt with in the defendant's country and that since both he and the plaintiff were Koreans, the court should dismiss this case is an assertion of forum non conveniens. Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Lee, 13 FSM R. 252, 257 n.5 (Chk. 2005).

Forum non conveniens is a common law doctrine which allows a court the discretion to refuse to hear a case, even though personal jurisdiction and venue are properly established, if the forum is inappropriate or inconvenient for the defendant. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its sound discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Generally, a court with jurisdiction over a case is bound to decide it. The forum non conveniens doctrine is the rare exception to this principle, and the defendant's burden on a forum non conveniens motion to dismiss is a strong one. The doctrine does not come into play unless the court in which the action was brought has both subject matter and personal jurisdiction and is a proper venue. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

The objection of forum non conveniens is not a defense of improper venue, which must be asserted by preliminary motion or answer. It is simply a motion which may be addressed to the discretion of the court at any time. It may be raised after as well as before answer, but the objection should be taken with reasonable promptness. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

There is no time limit on when a motion to dismiss on the ground of forum non conveniens can be made. However, if the litigation has progressed significantly in the court a defendant's belated assertion that that forum is inconvenient is likely to be dimly viewed by the court. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

When, although it has been quite some time since the suit was filed, only the issues of personal jurisdiction over a defendant and whether he had defaulted have been litigated; no discovery has been requested; and trial is months away, the court cannot say that the litigation has progressed significantly with respect to that defendant. Thus that defendant's forum non conveniens motion is not too late and the issue has not been waived. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

There is one mandatory prerequisite and a number of factors that the court must consider before granting a forum non conveniens motion to dismiss. The forum non conveniens doctrine can only be applied if the plaintiff has an adequate alternative forum. The factors to be considered include both private and public interests. The private interest factors are: 1) the relative ease of access to sources of proof; 2)

the availability of compulsory process for the attendance of unwilling witnesses; 3) the costs of obtaining the attendance of willing witnesses; 4) the possibility of a site view, if appropriate to the case; and 5) any other practical problems that make a case's trial easy, inexpensive, and expeditious. The public interest factors to consider include: 1) administrative difficulties from court congestion; 2) the local interest in having localized disputes decided locally; 3) the interest in having a diversity case tried in a forum at home with the law that must govern the action; and 4) avoidance of any unneeded problems in the conflict of laws or the application of foreign law. Lee v. Han, 13 FSM R. 571, 577 (Chk. 2005).

When most of the parties to a contract, and all of the parties that that contract required future payment to, and payment from, are Korean citizens and residents although at the time the contract was executed most were resident in Chuuk; when this, and the Korean, lawsuit are all about that payment; when the parties to the Korean lawsuit (with the exception of a d/b/a of a Korean citizen and resident which is located in Texas) are all Korean citizens and residents; when the plaintiff in this case, and his wife and another Korean citizen and resident, are the plaintiffs in the Korean case; when the two Korean defendants in this case are the defendants in the Korean case; when all of the probable witnesses, with the exception of one (and maybe one other Chuukese), are present in Korea and no compulsory process is available to bring any of them to Chuuk if they are unwilling; when the cost to bring willing witnesses to Chuuk is higher than to bring the one possible witness in Chuuk to Korea, and if his testimony were needed, his deposition could have been noticed and taken here anytime while this case was pending in this court, but was not; when the sources of proof, to the extent they are documents from the parties' business records from when they were all in business together in Chuuk, are available in Korea and a site view is not needed; trying the case here would not be as easy, inexpensive, or expeditious as the current case in Korea, and it appears that it would be duplicative. The private interest factors thus strongly favor a forum non conveniens dismissal. Lee v. Han, 13 FSM R. 571, 577-78 (Chk. 2005).

When, although the dispute originated in Chuuk, it cannot be said that it is a local dispute in which there is local interest even though Chuuk contract law would apply; and when the FSM Supreme Court would be more at home with Chuuk contract law than a Korean court, but there appears to be no reason why the Korean court would not be capable of adequately applying Chuuk contract law since it is based primarily on common law principles, widely known and discoverable, although Korea is not a country in the common law tradition, the public interest factors do not preclude the application of the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

When there is an adequate, alternative forum in Korea (in which the principal parties are actively litigating the issue); when the private interest factors strongly favor Korea as the most convenient forum and Chuuk as being an inconvenient forum; and when the public interest factors do not contradict this, the court concludes that this case should be dismissed under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 578 (Chk. 2005).

When the plaintiff has actively pursued litigation in a Korean court, both before and during the time the litigation was pending here, and the defendant actively defended that action, it would be unreasonable and unjust to require the Korean defendants to litigate this case twice, with the second time in a forum where, although it (Chuuk) was convenient when it was chosen and all the parties had business interests here, is no longer convenient, reasonable, or just. Under the circumstances, the plaintiff has waived enforcement of the forum selection clause. Limited to this case's particular facts and circumstances, the forum selection clause will not bar dismissal of this case without prejudice under the forum non conveniens doctrine. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18 FSM R. 270, 274 (Chk. 2012).

– Dismissal – Lack of Jurisdiction

When it appears that the court lacks subject matter jurisdiction the case will be dismissed. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Thus subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Island Dev. Co. v. Yap, 9 FSM R. 220, 222 (Yap 1999).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

A motion to dismiss for lack of subject matter jurisdiction is properly considered under Civil Procedure Rule 12(h)(3) and may be raised at any time. The motion is treated as a suggestion that the court lacks subject matter jurisdiction. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

When the court's jurisdiction is placed at issue, it is the plaintiff's burden to show that the Supreme Court does have jurisdiction, and that a colorable claim exists. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119 (Pon. 2001).

When a court has both subject matter and personal jurisdiction over a case, a motion to dismiss on jurisdictional grounds will be denied. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

If it appears that the court lacks jurisdiction over the complaint's subject matter, it shall dismiss the action. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for lack of subject matter jurisdiction is properly brought pursuant to Rule 12(b)(1), or as a motion to dismiss pursuant to Rule 12(h)(3), which can be raised at any time. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 n.3 (Chk. S. Ct. Tr. 2003).

A motion to dismiss for lack of jurisdiction will be denied when the plaintiffs' complaint alleges claims that arise under national law and the national constitution because the FSM Supreme Court exercises jurisdiction over such cases, and, although state courts may also exercise jurisdiction over such cases, the plaintiffs have a constitutional right to bring such cases in the FSM Supreme Court if they so desire. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A denial of a motion to dismiss for lack of jurisdiction is without prejudice to Social Security's right to raise the statute of limitations defense by motion pursuant to FSM Civil Rule 12(c). Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Rule 12(h)(3) provides that whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Whenever it appears by the parties' suggestion or otherwise that the court lacks subject matter jurisdiction, the court must dismiss the action. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414 (Chk. 2004).

When all parties to an action are foreign citizens, diversity jurisdiction is not present, and if no other basis for FSM Supreme Court jurisdiction is apparent, the case will be dismissed without prejudice. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 415 (Chk. 2004).

For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

When a vessel owner never purposefully availed himself of the privilege of conducting activities in the FSM because of the bareboat charter of his vessel, for the court to exercise in personam jurisdiction over the vessel owner would violate well established notions of fair play and substantial justice. The vessel owner's motion to dismiss will be granted and he will be dismissed as a defendant. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

If it appears that the court lacks subject matter jurisdiction, the case must be dismissed since any judgment rendered by a court without subject matter jurisdiction would be void. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

A court may, on its own motion, dismiss an action for lack of jurisdiction since the lack of subject matter jurisdiction is an issue that can be raised at any time and can appear by suggestion of the parties or otherwise. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter

jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

A motion to dismiss filed in the Chuuk State Supreme Court asserting non-consent to the court's jurisdiction will not, by its invocation of the FSM court's jurisdiction, deprive the Chuuk State Supreme court of its jurisdiction. Rather, in diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Thus, when an action is originally filed in state court, the state court retains its jurisdiction, despite the diversity of parties, so long as the same action is not filed in or removed to the FSM court. An allegation of diversity jurisdiction is not a proper basis for a defendant's motion to dismiss. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

When jurisdictional issues are inextricably intertwined with the case's merits and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction will be denied, and if a motion to dismiss for lack of standing is denied, the court does not somehow imply that, at that stage of the proceedings, it has made any findings on a claim's merits. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

The court may, at any time and on its own motion, move to dismiss a case when it appears that the court lacks subject-matter jurisdiction. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Even though the defendants have not challenged the court's jurisdiction over a matter, jurisdiction is always relevant, such that a judgment may be void if the court that rendered it lacked subject-matter or personal jurisdiction. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 98 (Pon. 2011).

A court will address the part of a motion to dismiss concerning subject-matter jurisdiction first since if the movant were to prevail on this ground any court ruling on the other grounds would be nothing more than advisory opinions, and the court does not have the authority to render advisory opinions. Iwo v. Chuuk, 18

FSM R. 182, 183-84 (Chk. 2012).

After notice, an action is subject to dismissal without prejudice whenever it appears that the court lacks jurisdiction of the subject matter. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

When, besides moving to dismiss for lack of subject-matter jurisdiction, a defendant has also pled and moved for dismissal on statute of limitations grounds, rather than further complicate the resolution of that issue by a dismissal and a refiling, a better use of the court's resources would be for the court to stay its ruling on the pending summary judgment motion and motion to dismiss in order to allow the plaintiff, if he so desires, an opportunity to use that time frame to move to amend his complaint to plead the court's jurisdiction with greater particularity. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

When the defendant has filed a summary judgment motion and a motion to dismiss for lack of jurisdiction, the court will consider the motion to dismiss first because if the court were to grant the motion to dismiss, any ruling the court made on the summary judgment motion would, at best, be an advisory opinion since it would have been made without jurisdiction and the FSM Supreme Court does not have the authority to render advisory opinions. Hauk v. Mijares, 18 FSM R. 185, 186-87 (Chk. 2012).

When a fair reading of the complaint does not show a cause of action against the one diverse defendant, that person is thus merely a nominal party present only so that the plaintiff can plead the court's diversity jurisdiction. When the plaintiff has, for the sole purpose of attempting to create diversity of citizenship, named a person as a defendant against whom he asserts no cause of action or claim for relief, the court will dismiss the nominal diverse defendant from the case as improperly joined and then dismiss the complaint for lack of subject-matter jurisdiction because there was no actual diversity of citizenship when the case was filed. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except when those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

A motion to dismiss Yuh Yow Fishery will be denied when the allegations in the amended complaint are sufficient to show personal jurisdiction over Yuh Yow Fishery if the plaintiffs succeed in proving the alter ego allegations that Yuh Yow Fishery is the alter ego of the corporations that own the vessels since Yuh Yow Fishery would have operated vessels that are alleged to have caused damage while in FSM waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

When the FSM Supreme Court does not have any subject-matter jurisdiction over the case, it will dismissed without prejudice to any adjudication in the state court. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Whenever a case is dismissed for lack of subject-matter jurisdiction, it is dismissed without prejudice to a determination on the merits by a tribunal that has subject-matter jurisdiction over the case. This should make sense because a dismissal with prejudice is considered a ruling on the case's merits, and if a court lacks subject-matter jurisdiction over a case, the court is without any authority to make any ruling on the merits. Kuch v. Mori, 18 FSM R. 442, 443 (Chk. S. Ct. App. 2012).

A trial court's dismissal "with prejudice" for lack of subject-matter jurisdiction is either reversible error or it only addresses the determination of the trial court's subject-matter jurisdiction, not the merits of the plaintiff's case. It has no other effect. Kuch v. Mori, 18 FSM R. 442, 444 (Chk. S. Ct. App. 2012).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 504 (Chk. 2013).

A plaintiff has a personal stake in the litigation's outcome when the Plan's insurance premiums are taken from his senatorial salary and when, since he is one of the two co-equal heads of the Chuuk Legislature, it appears that he has standing in his representative capacity. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

One FSM Supreme Court trial division justice does not have subject matter jurisdiction to set aside orders entered in another separate trial division case, nor does he hold subject matter jurisdiction to grant injunctive relief against another trial division justice. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the case is not a case arising under the FSM Constitution or national laws, the only grounds asserted for jurisdiction, the FSM Supreme Court does not have subject-matter jurisdiction over it, and when the FSM Supreme Court does not have any subject-matter jurisdiction over a case, the case will be dismissed without prejudice to any later adjudication in a state court. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When there are no material facts in dispute and the defendants are entitled to judgment or to a dismissal on their affirmative defense of lack of subject-matter jurisdiction, the court will render summary judgment in the defendants' favor on the jurisdictional issue because whenever it appears by suggestion of the parties or otherwise that the FSM Supreme Court lacks jurisdiction of the subject matter, it must dismiss the action without prejudice to any case that the plaintiffs may file in a state court of competent jurisdiction. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

Whenever it appears by the parties' suggestion or otherwise that the court lacks subject-matter jurisdiction, the court must dismiss the action. Ramirez v. College of Micronesia, 20 FSM R. 254, 260 (Pon. 2015).

Whenever it appears by suggestion of the parties or otherwise, including being raised as an affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

– Dismissal – Lack of Prosecution

When the plaintiff has been given reasonable notice of his trial and he and his attorney failed to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim and it is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM R. 405, 414-15 (Pon. 1984).

Dismissal of a claim for failure of the plaintiff to prosecute normally operates as an adjudication on the merits. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

Where just, the court has discretion to enter a judgment of default based on a party's failure to obey an order or permit discovery, FSM Civ. R. 37(b)(2)(C), or based on a plaintiff's failure to prosecute his case, FSM Civ. R. 41(b). McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

The purpose of the rule allowing dismissal for failure to prosecute is to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding congestion in trial court calendars. McGillivray v. Bank of the FSM, 7 FSM R. 19, 23 (Pon. 1995).

Cases may be dismissed for the plaintiff's failure to prosecute or to comply with the rules or any order of court. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Where grounds exist, an action is subject to dismissal, as a general rule, on the court's own motion and the trial court has power to dismiss an action, sua sponte, for want of prosecution. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Courts in the exercise of their inherent powers may dismiss an action in which a plaintiff refuses to comply with an order of the court or the setting of a case for trial. In dismissing an action the court may consider the importance of a judge maintaining control of his calendar and that a trial, once set, should be continued only for the most compelling reasons. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

When all parties have been duly served notice of a scheduled hearing and none appear, the case may be dismissed with prejudice because the plaintiff failed to appear and prosecute his case and is deemed to have abandoned his claim. Sally v. Andon, 9 FSM R. 55, 56 (Chk. S. Ct. Tr. 1999).

Rule 41(b) requires prosecution of a civil lawsuit with reasonable diligence to avoid dismissal. The burden of prosecuting a civil lawsuit lies with any party seeking affirmative relief. O'Sullivan v. Panuelo, 9 FSM R. 229, 231 (Pon. 1999).

There has been a clear record of delay justifying dismissal for failure to prosecute when substantial delay has resulted from plaintiff's failure to act during the period from December, 1994 until September, 1999, and from plaintiff's subsequent failure to act with the due dispatch required by the court's November 25, 1999 order. Kosrae v. Worswick, 9 FSM R. 437, 441-42 (Kos. 2000).

When a court order required the plaintiff-appellee to file within 30 days a written request for trial on his trespass claim if he wished to prosecute the claim, and he did not, the trespass claim is dismissed. Jonas v. Paulino, 9 FSM R. 519, 522 (Kos. S. Ct. Tr. 2000).

When the court dismissed the case in material part on the basis of the plaintiff's failure to proceed with "all due dispatch," as required by the court's order and when, with the benefit of hindsight, "all due dispatch" was an inadequate choice of directives because it did not set out precisely what was expected of counsel and when, and when although the plaintiff did nothing to prosecute the case for nearly five years, the court did not intervene to get the case back on track before the notice of trial setting was issued, reconsidering all the circumstances, the better course is to vacate the dismissal. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 137 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court's determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When reviewing a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for

clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

Dismissal under Rule 41(b), like Rule 37, should be allowed only in the face of a clear record of delay or contumacious conduct by the plaintiff, or upon a serious showing of willful default. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

Although ultimately the granting or denial of involuntary dismissal rests in the sound discretion of the court, the record must still support a finding of delay attributable to plaintiff's conduct. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When plaintiff's counsel did not receive formal notice of the Kosrae trial date until six days before trial and he acted reasonably in attempting to travel to Kosrae, and given the effort counsel previously made to try these cases, counsel's inability to make the flight did not justify the trial court's dismissal order because counsel had not acted willfully or out of disdain for the trial court's authority. Considering the minimal three day continuance requested by counsel and the absence of prejudice to the defendants, the trial court abused its discretion in ordering the cases' dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 140 (App. 2001).

When six months have elapsed since the plaintiffs first asked for time to find new counsel and a court order explicitly stated what the consequences would be if new counsel did not file a notice of appearance by March 30, 2001, the plaintiffs' remaining punitive damages claim, absent a showing of good cause and excusable neglect, will be dismissed, and, given the purpose of punitive damages, a final judgment entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

While the court is reluctant to hold a party responsible for the party's attorney's failure to act in time but when it was plaintiffs themselves who were acting to find new counsel, in the absence of a showing of excusable neglect for their failure to do so, the court will hold the plaintiffs responsible for their own actions and dismiss the punitive damages claim so that judgment may be entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

When on the day set for trial the defendants were not present to proceed on their counterclaim, the counterclaim is dismissed. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001).

Under Civil Procedure Rule 41(b), the court may dismiss a case for the plaintiff's failure to prosecute and such a dismissal operates as a final judgment on the merits unless the court in its dismissal order specifies otherwise. Kishida v. Aizawa, 13 FSM R. 281, 283 (Chk. 2005).

When a plaintiff has been served with notice from the court that, if further steps were not taken to prosecute a case against a defendant, the case against him would be subject to dismissal for want of prosecution and when no steps have been taken to further prosecute the case against that defendant, the case against that defendant will be dismissed with prejudice for lack of prosecution. Lee v. Han, 13 FSM R. 571, 579 (Chk. 2005).

Parties' claims, however denominated, may be dismissed with prejudice pursuant to Civil Rule 41(b) and (c) for lack of prosecution. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

To avoid dismissal for failure to prosecute, civil lawsuits must be prosecuted with reasonable diligence. The purpose of the rule allowing dismissal for failure to prosecute is to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding court congestion. Courts in the exercise of their inherent powers may therefore dismiss an action in which a plaintiff refuses to comply with a court order. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

When the plaintiff has been given reasonable notice of his trial and he and his attorney fail to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim subjecting it to dismissal for failure to prosecute. In dismissing an action, the court may consider the importance of a judge maintaining control of his calendar; trial continuances should be granted only for the most compelling reasons. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477-78 (Chk. S. Ct. App. 2009).

Failure to proceed against the remaining *in rem* defendant can lead to its dismissal for want of prosecution. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 81 (Pon. 2015).

When the counsel for the plaintiff, who had passed away on May 25, 2013, was put on notice, on July 27, 2016, that if further steps to prosecute the case were not taken, dismissal was warranted for failure to prosecute; and when counsel, on August 26, 2016, moved for a 330-day extension to file and complete probate but no probate action was initiated, the ninety-day window for moving to substitute has long since closed. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

Civil lawsuits must be prosecuted with reasonable diligence to guard against delay in litigation and harassment of the defendant, as well as preventing undue delays in disposition of pending cases and avoiding court congestion. Since inactivity amounts to abandonment of a claim, the court, in dismissing an action, may consider the importance of a judge maintaining control of his or her calendar. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

Under Kosrae Civil Rule 41(b), the court may dismiss a claim for the plaintiff's failure to prosecute or to comply with the court's rules or with any court order. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

– Filings

Trial courts have considerable discretion in ruling on motions for extension of filing deadlines. A court which has already extended a filing deadline does not abuse its discretion by refusing to grant successive extensions. McGillivray v. Bank of the FSM (II), 6 FSM R. 486, 488 (Pon. 1994).

Filing and service of pre-trial briefs by the court ordered deadline are mandatory and not optional. Violation of court orders with respect to the filing of pre-trial briefs, or any other required action, may result in sanctions against that party. All requests for an enlargement of time to file pre-trial briefs must be made in writing. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

The phrase "et al." or such other similar indication is not permitted in the caption of a complaint although it may be used on later filings. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

When an act is required or allowed to be done at or within a specific time, the court for cause shown may at any time in its discretion upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. The court will find excusable neglect and deny a motion to strike papers filed out of time when the filer did not seek a further enlargement, but had a motion for enlargement pending, as far as he knew, until January 3, 2003, and he promptly filed his papers as soon as he was able on January 6, 2003, and when two enlargements of time had been

requested because of catastrophic damage done to the filer's office by a super-typhoon and the court would have granted another limited enlargement had it been requested. Goyo Corp. v. Christian, 12 FSM R. 140, 143-44 (Pon. 2003).

When citing to sources not available in FSM libraries, counsel are expected to provide copies to the court and opposing counsel. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 468 n.1 (Pon. 2004).

Regardless of what a party chooses to call the papers they have filed, those papers are what they are based upon their function or the relief they seek. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.4 (Pon. 2008).

Filing in duplicate is required and opposing parties must each be served a copy. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Under Rule 11, an attorney's signature in a pleading, motion, or other paper certifies, inter alia, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Under the Rule 11 idea of "well grounded in fact," it is not necessary that an investigation into the facts be carried to the point of absolute certainty. The investigation need merely be reasonable under the circumstances. In applying Rule 11 to motions, legal arguments should be accompanied by evidentiary support and where evidentiary support is lacking, the moving party should specifically identify those factual contentions. Following this clear standard when filing pleadings, motions, or other papers are filed with the court will help secure the just, speedy, and inexpensive determination of every action. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Every summons signed by the clerk should state the name, address and telephone number of the plaintiff's attorney or trial counselor, if any, otherwise the plaintiff's address and telephone number, and the court clerk is supposed to determine before filing that a paper subsequent to the summons and complaint has a certificate of service and contains the mailing address and telephone number of the party filing the paper or the party's attorney. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

The court will not penalize a party for a court employee's omission in failing to see that a filing contained the filer's phone number. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

When no reason is provided for late filing and an enlargement of time is never sought, responsive papers will, on the opposing party's unopposed motion to strike, be stricken from the record as untimely. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 255 (Pon. 2014).

A party who files a motion to enlarge time and files that motion out of time, must demonstrate excusable neglect for the delay. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

When a typhoon disrupted power and shut down all offices, courts, and utilities between October 17 and October 18, 2013, precluding the plaintiffs from properly serving the defendants, it is clear that the plaintiffs were justified in filing their motion *ex parte*, and have demonstrated excusable neglect, as the delay was caused by a *force majeure* event. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

If a submission is signed in violation of Rule 11, the court must impose an appropriate sanction on the person who signed it, a represented party, or both. The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the court's sound discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Both bad faith arguments and frivolous, good faith arguments are sanctionable. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon.

2014).

An attorney's signature on a filing constitutes a certificate by the signer that the signer has read the filing and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 580-81 (Pon. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

All papers after the complaint that are required to be served on a party must be filed with the court, in duplicate, either before service or within a reasonable time thereafter and must be accompanied by certificate of service of copies on all other parties. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

A certificate of service must be filed with the court when the relevant paper is filed, and the court must rely on a certificate of service attached to a filing and presume that it is correct, but that may be rebutted by admissible evidence. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

All filings must be served upon each of the parties, but no service need be made on the parties in default for failure to appear except for pleadings asserting new or additional claims for relief against them. Neth v. Peterson, 20 FSM R. 601, 603 n.1 (Pon. 2016).

An attorney is duty-bound, in accordance with Rule 11, to conduct due diligence before affixing his or her signature to a document. Under Rule 11, a court must determine whether the document is signed and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, is well grounded in fact, as well as warranted by law and not interposed for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

– Filings – By Facsimile

Telecommunication facsimiles are an unacceptable means of filing with the FSM Supreme Court. In re Marquez, 5 FSM R. 381, 383 n.1 (Pon. 1992).

Fax transmissions cannot be received for filing. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Permission for parties to file documents by fax transmission may be given for special cause and shall only apply to the case until otherwise ordered. O'Sullivan v. Panuelo, 9 FSM R. 229, 232 (Pon. 1999).

When, although a copy has been faxed to the court, a motion has never been filed and when no application for filing by facsimile pursuant to Civil Procedure Rule 5(e) has been made, the motion is not before the court. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 606 (Chk. 2000).

Filing by fax is permitted only by order of a justice for special cause given. The rule allowing fax filing for special cause is not an excuse to wait for the filing deadline and then fax the papers to the court. Waiting to the last minute because it can then be faxed does not constitute "special cause." In re Engichy, 11 FSM R. 450, 451 (Chk. 2003).

The court may, without notice upon a party's request for cause shown, order an enlargement of time to file if the request is made before the expiration of the period previously ordered by the court. The higher standard of "special cause given" is required for fax filing. In re Engichy, 11 FSM R. 450, 451 (Chk. 2003).

When a deadline is approaching, motions may customarily be accompanied by a motion to file by fax. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

General Court Order 1990-1 does not apply to filing by facsimile transmission in civil cases because the (later promulgated) applicable portion of Civil Procedure Rule 5(e) has superseded it. It may retain some vitality in criminal cases since the criminal rules do not contain a provision concerning fax filing. However, Civil Rule 5(e)'s pertinent part is identical to section 2 of General Court Order 1990-1. Goya v. Ramp, 13 FSM R. 100, 105 & n.3 (App. 2005).

In absence of an order of a justice, given for special cause, the clerk of court will not accept for filing any document transmitted to the clerk through a telecommunication facsimile. Goya v. Ramp, 13 FSM R. 100, 105 (App. 2005).

Neither General Court Order 1990-1 nor Civil Rule 5(e) delineates the method(s) whereby an order to file by fax can be obtained or by which a request to file by fax is to be made. Neither expressly prohibit a request to file by fax from being made by fax. Goya v. Ramp, 13 FSM R. 100, 105 (App. 2005).

A faxed "motion" to file by fax remains an unfiled request for an order to file by fax unless and until a justice grants the request and orders the "motion" and accompanying papers filed. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

Since "special cause" is a higher standard than mere "cause shown," but a different standard than "good cause shown," the implication is that "special cause" will usually arise from either short, or very short, court-ordered deadlines, or as the result of an unforeseen, unexpected, or unanticipated event or circumstance. Applying by fax for an order to file by fax would seem the only sensible method when the "special cause" shown is an unforeseen, unexpected, or unanticipated circumstance or event. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

When a partially legible document was received by facsimile transmission but no motion to file it by fax was received and when no original and a copy for filing were ever received, that document was not filed and the court will not consider it since filing by fax is permitted only by court order for special cause given. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 630 n.1 (Pon. 2008).

Motions to file by facsimile do not require detailed evidentiary support, only a showing of "special cause." FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

– Frivolous Actions

Although it is ultimately proved that plaintiff has no solid claim or theory against a defendant, plaintiff's action against that defendant is not vexatious or frivolous where 1) plaintiff reasonably believed at the outset of litigation that defendant might be liable, 2) a considerable amount of discovery was required to establish that defendant was not liable, 3) plaintiff did not stubbornly insist on defendant's liability in the face of defendant's motion for summary judgment, and 4) other defendants would presumably have named defendant in the case in any event, so that defendant would have incurred substantial attorney's fees regardless of plaintiff's actions. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 209 (Pon. 1986).

The court strongly disapproves of as frivolous and a waste of the court's resources the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

A litigant pleading non-frivolous along with frivolous claims cannot expect to avoid all sanctions under Rule 11 merely because the pleading or motion under scrutiny was not entirely frivolous. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

When the plaintiffs' amended complaint sets forth a serious claim that the defendant was violating its own regulations, it cannot easily be dismissed as frivolous even though the court granted the defendant summary judgment since the fact that the court agrees with the defendant on the factual issue does not necessarily make the plaintiffs' claim frivolous. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon.

2006).

A court may award attorney's fees against a party when that party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. Jano v. Fujita, 16 FSM R. 502, 503 (Pon. 2009).

When the plaintiff failed to present at trial any evidence on two elements of his causes of action; when the plaintiff alone testified and his testimony itself was speculative, conclusory, and lacking in foundation; when given the testimony's overall lack of credibility, as well as the lack of other evidence presented at trial to sustain the plaintiff's burden of proof, the court can conclude that the plaintiff brought the lawsuit vexatiously and in bad faith, and, accordingly, the defendant may be awarded his attorney's fees incurred in the course of the lawsuit. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

When the plaintiffs' claim is one for breach of contract and there are factual allegations that are in dispute; when the parties entered into a contract for legal services and the plaintiffs claim that the defendant did not perform what he promised to do; when the defendant claims that the plaintiffs brought suit against the defendant knowing that they were in breach of contract; and when this is not a valid legal argument and the plaintiffs were not aware they were in breach of contract and felt that defendant was in breach, the plaintiffs' claim is not frivolous. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings and the decision to impose them is addressed to the trial court's discretion. When a claim is asserted by the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories, the court will consider that claim frivolous. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

When the plaintiffs' complaints seek the same relief that had previously been denied by both the trial and appellate divisions, their efforts to stop the bank's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed in both trial and appellate divisions, and when they were aware at the time of filing that these complaints offered no reasonable chance of relief, the court must infer that the complaints were filed for the improper purposes of causing unnecessary delay of bank's judgment enforcement actions and for causing needless increase in its litigation costs. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

– Injunctions

FSM Civil Rule 65 providing for issuance of temporary restraining orders and preliminary injunctions pending final decisions by the court, is drawn from rule 65 of the United States Federal Rules of Civil Procedure, so decisions of the United States courts under that rule are a legitimate source of guidance as to the meaning of FSM Civil Rule 65. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 275 (Pon. 1986).

In considering motions for temporary restraining order or for preliminary injunction, courts weigh the possibility of irreparable injury to the plaintiff, the balance of possible injuries between the parties, the movant's possibility of success on the merits, and the impact of any requested action upon the public interest. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 276-77 (Pon. 1986).

The trial court is required to exercise broad discretion and weigh carefully the interests of both sides in order to arrive at a fair and equitable result. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 177 (Pon. 1987).

Courts generally consider the likelihood of success on the merits of the party seeking injunctive relief, the possibility of irreparable injury as well as the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and any impact upon the public interest. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 177 (Pon. 1987).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 276-77 (Pon. 1993).

In exercising its broad discretion in considering whether to grant a preliminary injunction the court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 288 (Pon. 1993).

An injunction allowing defendants in a trespass action to remain on the land, harvest their crops, but preventing them from destroying any trees or expanding their cultivations or further entrenching their positions will prevent irreparable harm to the plaintiffs, balance the interests of the parties, and serve the public interest by preserving the status quo while the litigation is pending. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 289-90 (Pon. 1993).

Where there is little likelihood that of success on the merits, where economic loss does not represent irreparable harm, where the balance of interests weighs against the plaintiff, and where the public interest favors regulation of alcohol sales, no preliminary injunctive relief will be granted the plaintiff ordering the defendant state grant it an alcoholic beverage license which would not preserve the status quo pending the litigation. Simon v. Pohnpei, 6 FSM R. 314, 316-18 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM R. 365, 391-92 (Pon. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; plaintiff's likelihood of success on the merits; and the public interest. Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, is largely a matter of the facts of each situation and is thus a matter peculiarly for the discretion of the trial judge. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

A court must weigh three factors other than irreparable harm when considering injunctive relief. Those are: the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of

success by the plaintiff in the underlying case. Where none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Preliminary injunctions are granted or denied based on a court's consideration of four factors: a) the possibility of irreparable harm to the plaintiff, b) the balance of possible injuries to the parties, c) the movant's possibility of success on the merits, and d) the impact of any requested action upon the public interest. In arriving at a fair and equitable result a court exercises broad discretion and weighs carefully the interests of both sides. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 196-97 (Kos. S. Ct. Tr. 1995).

Where plaintiff's poverty is disputed thus not showing irreparable injury to him for failure to redeem his shares, where the balance of harms favors the credit union, where the plaintiff's likelihood of prevailing on the merits is likely but uncertain without knowing the contents of the credit union's by-laws, and where the public interest favors a sound credit union there will be no injunctive relief ordering the credit union to redeem plaintiff's shares. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197-98 (Kos. S. Ct. Tr. 1995).

When a final judgment has been entered on the merits, a preliminary injunction comes to an end and is superseded by the final order. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

A temporary restraining order may only be granted without notice if there is a showing that notice should not be required and of any attempts to give notice to the opponent. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 107 (Chk. 1997).

When there is an Appellate Rule 4(a)(1)(B) appeal from the grant of an injunction the trial court loses its power to vacate the order when the notices of appeal are filed. However, as with Rule 59(e) and 60(b) motions, the trial court may consider and deny the motion, or, if it were inclined to grant the motion, so indicate on the record so as to allow the movant an opportunity to request a remand from the appellate division so that it could proceed to grant the motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.2 (Chk. 1997).

Pursuant to FSM Appellate Rule 4(a)(1)(B) the FSM Supreme Court appellate division has jurisdiction to hear an appeal from an interlocutory order granting a permanent injunction. Stinnett v. Weno, 8 FSM R. 142, 145 n.2 (Chk. 1997).

Rule 62(c) giving the trial court the authority to "suspend, modify, restore, or grant an injunction during the pendency of the appeal" does not give any authority to vacate an order granting an injunction that has been appealed. It only allows a trial court in its discretion to issue such orders as are necessary to preserve the status quo while the appeal is pending. Jurisdiction has otherwise passed to the appellate court. Stinnett v. Weno, 8 FSM R. 142, 145 (Chk. 1997).

In considering whether to grant a motion for preliminary injunction, a court looks to four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 161 (Pon. 1997).

Injunctive relief will be granted when three of the four factors to be considered favor granting the preliminary injunction, particularly when the plaintiffs have demonstrated a substantial likelihood of success at trial. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

In order for the appellate division to hear an appeal in the absence of a final judgment there must be some other source of jurisdiction, such as FSM Appellate Rule 4(a)(1)(B) which allows appeals from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

As a general rule in an interlocutory appeal of an injunction an appellate court concerns itself only with the order from which the appeal is taken, and reviews other issues only if they are inextricably bound up with the injunction. Thus an appellate court has jurisdiction to review a summary judgment on the merits when the appellants are subject to a permanent injunction which is inextricably bound up with the underlying summary judgment. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

A non-party is entitled to permanent injunctive relief against the issuance of a writ of execution when its due process rights are violated because no adequate remedy at law exists when the non-party has no right to appeal, cannot move for the judge's disqualification, or a stay of the writ pending appeal, and a motion to intervene as a party was never acted upon, and because the injury is irreparable in that if the writ is enforced, there is no assurance that the financial loss could be recovered. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305-06 (Chk. 1998).

The mere fact that a statute is alleged to be invalid will not entitle a party to have its enforcement enjoined. Further circumstances must appear which bring the case under some recognized head of equity jurisdiction and present some actual or threatened and irreparable injury to complainant's rights for which there is no adequate legal remedy. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

When issues of fact must be decided in the proper forum before the validity of a municipal ordinance can be determined and other cases are pending that will decide those issues, plaintiffs have an adequate remedy at law. Therefore, when it does not clearly appear from specific facts alleged that immediate and irreparable injury will result to plaintiffs before the defendants can be heard in opposition, a request for a temporary restraining order will be denied and the defendants must be served with a copy of the complaint forthwith so that a hearing on the plaintiffs' preliminary injunction request can be held. Esechu v. Mariano, 8 FSM R. 555, 556-57 (Chk. S. Ct. Tr. 1998).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law and when the court has taken judicial knowledge of the use to which the government has put the land and the public detriment that would result from an injunction prohibiting such use. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998).

Rule 65(b) of the Kosrae Rules of Civil Procedure contemplates that a verified complaint will be filed along with a motion for temporary restraining order and preliminary injunction. In the usual situation, the filing of a complaint along with the motion puts the party against whom injunctive relief is sought on notice as to the nature of the moving party's claim against him, but when injunctive relief is sought in a case with a long prior litigation history, it would not seem strictly necessary that a formal claim be filed in the action in order to put the other party on notice as to the nature of the claim. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

A court considers four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying relief; and 4) any impact on the public interest. Preserving the status quo pending litigation on the merits is the purpose of a preliminary injunction. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

Under Yap law, proceedings for judicial review of an agency decision may be instituted by filing a petition in a court of competent jurisdiction within thirty days after the issuance of the decision to be reviewed. The agency may grant, or the court may order, a stay of the administrative agency's final decision on appropriate terms. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

When the court has scheduled oral argument for judicial review of an agency decision, when the state is facing time constraints, and when the aggrieved party, although it has presented a fair question for determination on the record, has not demonstrated to the court's satisfaction that it is so likely to prevail, the court will exercise its discretion not to enter a stay or a TRO. International Bridge Corp. v. Yap, 9 FSM R. 362, 366 (Yap 2000).

Four factors are considered to determine if an injunction is proper: the relative harm to the defendant and to the plaintiff, the likelihood of success on the merits, the public interest and (often stated first) the threat of irreparable harm to the plaintiff. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

A preliminary injunction will issue when it is difficult to say that the defendants are harmed by requiring them to withhold action on the unconstitutional application of a public law, when it appears likely that the plaintiff will succeed on the merits at trial, when the public has a great interest that the national government adhere to divisions of political power set forth in the Constitution, and when the plaintiff has shown irreparable harm. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

When the court stated in its order granting a preliminary injunction that it would consider at the time of trial all of the admissible evidence which was presented at the preliminary injunction hearing, the court thereby made that evidence part of the record. It is thus also appropriate to consider this uncontroverted evidence to decide summary judgment motions. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 n.3 (Pon. 2001).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

Specific powers are given to each branch of the government and a public law that abridges the executive's power to execute and implement national laws may be enjoined. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

National government sovereign immunity is waived for claims for injunction arising out of alleged improper administration of FSM statutory laws, or any regulations issued pursuant to such statutory laws. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing such injunctions. Courts generally enter prohibitory injunctions – an injunction forbidding some act. Udot Municipality v. FSM, 10 FSM R. 354, 360 (Chk. 2001).

When a party has standing, a court may order an accounting of public funds because the Financial Management Act requires that public funds be properly accounted. Udot Municipality v. FSM, 10 FSM R. 354, 361 (Chk. 2001).

In reviewing a motion for preliminary injunction, the court weighs four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

Even though a discovery order may compel a party to perform certain actions, such an order is not injunctive in nature because it does not grant or withhold substantive relief. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

Every temporary restraining order expires by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

When a TRO was issued June 29, 2001 and was apparently extended by stipulation only until a hearing to be held on July 23, 2001, even if the TRO had been extended for a like period of the original 14 days, it could not have been in effect after July 27, 2001. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

A motion for a preliminary injunction may be denied without prejudice when it fails to contain the movant's certification that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 645 (Pon. 2001).

The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

The long established standard for issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties which would result from granting or denying relief; and 4) impact on the public interest. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

The issuance of a preliminary injunction is largely a matter of the facts of each situation and thus a matter for the trial judge's discretion. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

Injunctive relief will be granted when three of the four, or four of the four, factors to be considered favor the granting of the preliminary injunction. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113, 115 (Kos. S. Ct. Tr. 2002).

In determining whether to issue a preliminary injunction, a reviewing court considers: 1) the possibility of irreparable injury to the moving party; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) any impact on the public interest. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262g-62h (Pon. 2002).

When, upon weighing all of the factors, a court finds that it would be appropriate to issue an injunction, but during testimony, a party suggested what might be an acceptable solution, the court, before issuing an injunction, may give the parties an opportunity to work together to find a solution acceptable to both. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262i (Pon. 2002).

In reviewing a motion for preliminary injunction, the court weighs four factors: 1) the possibility of irreparable injury to the plaintiff; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) the impact of any requested action upon the public interest. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

When the trial court ordered an injunction to prevent further dissipation of existing appropriated funds because it found that 1) the broad language in the appropriations contained little guidance as to what specific projects were to be funded; 2) there were no fair and transparent procedures to apply for such funds; 3) an unlawful implementation procedure was being used; and 4) that there was a lack of oversight and compliance with the Financial Management Act and related regulations, the trial court acted entirely within its discretion. There was no abuse of discretion in issuing the injunction enjoining the allottees from obligating funds and the FSM from disbursing funds until such time as new procedures were put in place. FSM v. Udot Municipality, 12 FSM R. 29, 52-53 (App. 2003).

The elements for a court to consider in determining a request for injunctive relief include: 1) the possibility of irreparable injury to the moving party; 2) the balance of possible injuries between the parties; 3) the movant's likelihood of success on the merits; and 4) any impact on the public interest. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if 1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and 2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

Another requirement for a temporary restraining order's issuance is that the applicant's attorney certify to the court the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. Thus, when, in reviewing the applicant's attorney's affidavit, the court does not see that any efforts were made to notify the other parties to the lawsuit about the filing of the restraining order motion or any reasons why notice should not be required, the temporary restraining order motion will be denied since the Rule 65(b) requirements were not met. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127-28 (Pon. 2003).

The Kosrae Director of Education will be temporarily restrained from administering an FSM National Standard Test for Teachers for profiling purposes because there is no legal requirement for a teacher to take the test (although it is desirable to get as many teachers as possible to take it), when the Kosrae teachers will be irreparably harmed because of the teachers' mistaken belief and understanding that the test's completion is now required by law or regulation that successful completion of the test will result in that teacher's certification and because of the potential discipline to, and potential loss of salary by, any teacher who fails to take the exam. Mackwelung v. Robert, 12 FSM R. 161, 162-63 (Kos. S. Ct. Tr. 2003).

When a person has entered the plaintiff's parcel on at least two occasions and harvested crops in violation of the court's decision that the plaintiff is the fee simple owner of the parcel, an injunction will issue against that person and the defendants which prohibits further trespass and taking of crops from the parcel, and the defendants will be given a reasonable time to remove a local hut that they have constructed on parcel. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

In exercising its broad discretion in considering a motion for a preliminary injunction, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 246 (Chk. 2003).

A preliminary injunction will issue when all of the four factors to be considered in a motion for a

preliminary injunction favor its issuance, and the plaintiffs and any other person or entity acting on their behalf, will be prohibited from interfering in or attempting to interfere with the operation of the Sapuk cellular telecommunications tower constructed on a disputed lot. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

The Kosrae State Court must consider four criteria in determining whether to grant injunctive relief: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury to the plaintiff; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying injunctive relief; and 4) the impact upon the public interest. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Preserving the status quo pending litigation on the merits is the purpose of injunctive relief. In arriving at a fair and equitable result this court carefully weighs the interests of both sides and exercises broad discretion. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Rule 65(b) requires that the plaintiff show by affidavit or verified complaint that immediate and irreparable injury, loss or damage will result. When the plaintiffs' complaint is signed by both plaintiffs, but is not notarized, the complaint is not verified and does not meet Rule 65(b)'s requirements; when the plaintiffs' affidavit does not allege the details of immediate and irreparable injury, loss, or damage; and when the plaintiffs' application is defective as it does not contain any memorandum of points and authorities, the plaintiffs have not provided legal authority for granting of injunctive relief. Benjamin v. Youngstrom, 13 FSM R. 72, 74 (Kos. S. Ct. Tr. 2004).

A court must consider four criteria in determining whether to grant a preliminary injunction: 1) likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconvenience to the parties which would result from granting or denying relief; and 4) any impact upon the public interest. Injunctive relief will be granted when three of the four, or four of the four factors favor granting of the preliminary injunction. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When it would be inconvenient to plaintiffs to live without electricity or to be required to move from the parcel, as demanded by the defendant and when it would also be inconvenient to defendant, who holds prima facie title to the parcel, to be prohibited from acting as the true owner of the property, this factor is weighted equally between the plaintiffs and the defendant. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When the plaintiff did not name the real party in interest as a party defendant in a civil suit in which he sought a temporary restraining order, the court may include the real party in interest's counsel in the temporary restraining order motion hearing on the supposition that no injunctive relief should, or could, be granted that would adversely affect the real party in interest without prior notice to him. Asugar v. Edward, 13 FSM R. 209, 211 n.1 (Chk. 2005).

To seek the issuance of a temporary restraining order without notice, a plaintiff must, by citing specific facts, clearly show by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and the applicant's attorney must certify to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Asugar v. Edward, 13 FSM R. 209, 211-12 (Chk. 2005).

When it appears that the motion for a temporary restraining order and the pleadings were not served on

one or both defendants so as to give them adequate notice of the hearing and the issues to be heard and when no showing having been made that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition and no written certification having been made of the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required, the court will set a hearing on the temporary restraining order motion and issue a notice to that effect. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

When the three factors other than irreparable injury that the court must weigh before issuing a restraining order – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – also do not favor the restraining order's issuance because none of those factors weigh so strongly in the plaintiff's favor so as to overcome the lack of irreparable harm, no injunctive relief can be granted. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The long-established standard for the issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) the possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties from granting or denying relief; and 4) the impact on the public interest. Akinaga v. Heirs of Mike, 13 FSM R. 296, 298 (Kos. S. Ct. Tr. 2005).

When all factors except the balance of the injuries weigh in the plaintiff's favor, a preliminary injunction will issue enjoining the defendants from any action to plant crops, construct improvements, complete or conduct burials on the land, but permitting them to continue harvesting crops already planted there and permitting the plaintiff to conduct development on all three subject parcels, so long as her development activities do not interfere with the defendants' existing improvements and existing crops. Akinaga v. Heirs of Mike, 13 FSM R. 296, 300 (Kos. S. Ct. Tr. 2005).

The long-established standard for issuance of a preliminary injunction is that the court must consider four criteria in determining whether to grant one: 1) the likelihood of success on the merits of the party seeking injunctive relief; 2) The possibility of irreparable injury; 3) the balance of possible injuries or inconveniences to the parties from granting or denying relief; and 4) the impact on the public interest. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

When exercising its broad discretion in considering whether to grant a preliminary injunction, the court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. The object of a preliminary injunction is to preserve the status quo pending the litigation on the merits. Ruben v. Petewon, 13 FSM R. 383, 386 (Chk. 2005).

Civil Rule 71 only permits enforcement of orders and judgments against non-parties "when obedience to an order may be lawfully enforced against a person who is not a party." The key word here is "lawfully." Ordinarily a judgment may be enforced only against a party. However, an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and

successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

The general rule is that orders cannot be enforced against non-parties without violating the non-parties' constitutional rights to due process, and if an order can lawfully be enforced against someone it is because either that person is a party or it is an injunction being enforced and that person is a party's "officers, agents, servants, employees and attorneys," or a person "in active concert or participation" with a party. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

When the only decision a judge made was whether a preliminary injunction should issue to maintain the status quo until the Chuuk state court could resolve the matter, although in deciding that, the judge had to make some determination of the likelihood of success on the merits of the parties seeking the preliminary injunction, the merits were not decided nor were any determinations of the parties' rights made. In the normal course of events, such a ruling never precludes a judge from making a later ruling on the merits, that is, whether a permanent injunction and final judgment should issue. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

In ruling upon a motion for a temporary restraining order, the court must consider and weigh four factors: 1) the possibility of irreparable harm to the moving party; 2) the balance of injuries between the parties; 3) the likelihood of the movant's success on the merits; and 4) any impact on the public interest. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

When a plaintiff's complaint appears serious and non-frivolous, and when because there is no contract between the plaintiff and the defendant, the plaintiff has a very good chance of succeeding on the merits. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163 (Pon. 2006).

A *res judicata* argument cannot be made about a preliminary injunction because a preliminary injunction cannot have preclusive effect since it is not a decision on the merits. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court looks to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the moving party, 3) the balance of possible injuries or inconvenience to the parties which would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 461 (Pon. 2006).

When the movant's likelihood of success on the merits of its due process claim is almost certain; when the other three factors do not outweigh the likelihood-of-success-on-the-merits factor; and when the movant faces irreparable injury if the defendants develop the property for their own uses, a preliminary injunction will be granted to maintain the status quo. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

When there is little likelihood of success on the merits; when the claimed economic loss that the movant's business sales volume will not be able to grow as quickly or as large as it otherwise would, is speculative and does not represent irreparable harm; when the balance of interests does not weigh in the movant's favor; when the public interest does not favor the injunction; and when it would not preserve the status quo pending the litigation, the movant will not be granted preliminary injunctive relief. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462-63 (Pon. 2006).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. Doone v. National Election Comm'r, 14 FSM R. 489, 492 (Chk. 2006).

No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

When the plaintiffs, having filed multiple motions – including the motion to disqualify, which, if granted, would prolong resolution of this matter – have effectively conceded the absence of an emergency warranting a temporary restraining order, their motion for a temporary restraining order will be denied as moot. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 509 (Pon. 2006).

An injunction barring the plaintiffs from executing on their judgment against property the state owns in Hawaii will be denied when the state has not furnished any authority that what it calls a preliminary injunction can be issued in this circumstance – after a (consent) judgment has been entered and no appeal is pending (or contemplated); when no foreclosure proceeding has been filed in a Hawaii court; when court has insufficient information before it to conclude that the state is likely to succeed on a sovereign immunity defense to foreclosure, which would be determined by Hawaii and U.S. federal law; when, since no foreclosure proceeding has been filed, no injury to the state is yet possible; when, even if the plaintiffs sought foreclosure, the injury alleged is not to the state itself but to non-parties – to patients who would be inconvenienced by having to find other living arrangements; when the balance of possible injuries favors neither side; and when only the public interest factor might favor the state. Thus, even if the court could issue an injunction in this circumstance, the court, balancing the four factors, will conclude they would not favor injunctive relief. Tipingeni v. Chuuk, 14 FSM R. 539, 543-44 (Chk. 2007).

The FSM Supreme Court cannot enjoin a Hawaii court. Tipingeni v. Chuuk, 14 FSM R. 539, 544 (Chk. 2007).

In considering motions for a temporary restraining order, courts weigh the possibility of irreparable injury to the plaintiff, the balance of possible injuries between the parties, the movant's possibility of success on the merits, and the impact of any requested action upon the public interest. Billimon v. Marar, 15 FSM R. 87, 88 (Chk. 2007).

A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. Mathias v. Engichy, 15 FSM R. 90, 95 n.4 (Chk. S. Ct. App. 2007).

An order or judgment that may be lawfully enforced against someone who is not a party is an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise and against a non-party opponent for costs incurred by his misbehavior. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A court must weigh three factors other than irreparable harm when considering injunctive relief. Those are: the relative harm to the plaintiff and to the defendant, the public interest, and the plaintiff's likelihood of success in the underlying case. When none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm, injunctive relief will not be granted. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Under Rule 65(b), the court cannot grant an *ex parte* temporary restraining order without a showing that notice should not be required or of any attempts to give notice to the opponent. When a plaintiff has not filed the required Rule 65(b) certification his motion for an *ex parte* temporary restraining order can be denied. Bisaram v. Suta, 15 FSM R. 250, 254-55 (Chk. S. Ct. Tr. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them

the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

The issuance of an order for injunctive relief is largely a matter of the facts of each situation and thus a matter for the trial judge's discretion. The object of seeking injunctive relief, including a temporary restraining order, is to preserve the *status quo* pending the litigation on the merits. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 292 (Chk. S. Ct. Tr. 2007).

When a final judgment has been entered, temporary injunctive relief comes to an end and is superseded by the final order. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 292-93 (Chk. S. Ct. Tr. 2007).

A plaintiff's motion for a temporary restraining order filed after judgment had already been entered against the defendant and after the plaintiff had already requested an order in aid of judgment will be denied since the plaintiff has an available remedy in its motion for an order in aid of judgment and since it seeks to restrain funds in the hands of a third party without a specific determination as to the defendant's right to any part of those funds. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of immediate and irreparable injury if the TRO is not issued; 2) the balance of potential injury to the parties; 3) the likelihood of success on the merits by the party seeking the TRO; and 4) the impact of the requested action on the public interest. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

An application for a TRO must be verified only for temporary restraining orders entered without notice. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 545 (Pon. 2008).

When considering whether to afford an applicant the remedy of a temporary restraining order, the court considers four factors: 1) the possibility of immediate and irreparable injury in the event the TRO is not issued; 2) the balance of potential injury to the parties; 3) the likelihood of success on the merits; and 4) the impact of the requested action on the public. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 565 (Pon. 2008).

The familiar factors that a court will consider in deciding whether to issue a temporary restraining order are: 1) the requesting party's likelihood of success on the merits; 2) the possibility of irreparable injury to the moving party; 3) the balance of possible injury or inconvenience to the parties that would result from injunctive relief; and 4) any impact on the public interest. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 13 (Pon. 2008).

In exercising its broad discretion in considering a motion for a temporary restraining order, the court looks to four factors: 1) the possibility of the irreparable injury to the movant; 2) the balance of the possible injury as between the parties; 3) the movant's possibility of ultimate success on the merits; and 4) the impact upon the public interest. The threat of irreparable harm is a prerequisite to injunctive relief. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

Injunctive relief is a remedy available in proper cases. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

Determination of whether a party is entitled to injunctive relief would require an evidentiary hearing concerning the likelihood of success on the merits and other factors to be considered before granting an injunction. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will look to four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the

parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159-60 (Chk. 2010).

To support a preliminary injunction, a movant must show that irreparable injury will occur if the relief is not granted to maintain the status quo until a final adjudication on the merits and that there is a reasonable probability of success on the merits. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

When the non-movant has been using and quarrying the land since December 2009 and the plaintiff did not seek injunctive relief until September 2010 although he filed this case on March 2, 2010, enjoining the non-movant's continued use of the land would not preserve the status quo because the status quo was the non-movant's continued use of the land. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

In granting or refusing interlocutory injunctions the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

In exercising its broad discretion whether to grant a preliminary injunction, the court will weigh and balance four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

The court will not enjoin the national government or its officers from releasing municipal CIP funds to the various Chuuk municipalities when no Chuuk municipality, other than Tolensom, is a party to the action and the plaintiffs do not claim that the national government still holds any Tolensom CIP funds. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the other three factors weigh strongly in favor of a preliminary injunction freezing the Tolensom CIP funds, the plaintiffs' likelihood of success on the merits does not need to be great in order for an injunction to issue because a court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, non-frivolous issues. Even if the parties moving for preliminary injunction relief do not appear more likely than not to succeed on the merits, which would be a factor weighing against granting such relief, it is only one of four factors and is not necessarily determinative when the other factors point toward such relief, and thus the court does not need to determine the plaintiffs' likelihood of success on the merits of the action. It only needs to determine that they have some likelihood of success since if they had absolutely no likelihood of success, no injunction could issue. Marsolo v. Esa, 17 FSM R. 377, 381-82 (Chk. 2011).

An ex parte temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if both 1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and 2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required but those arguments are superfluous when the defendant has been notified. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

It is the nature of the political process that elections typically yield a single winner and one or more losers. Absent a showing of foul play or procedural irregularity, a defeated election contestant has no claim before any court of law. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When, at least procedurally, the law governing appeals of administrative decisions on contested elections has been properly complied with, a plaintiff's petition requesting an injunction against the revote

ordered by the Election Commission is wholly without merit and can only serve to frustrate the legal process underway in appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When a plaintiff fails to show that any of the factors considered weigh strongly enough in his favor to overcome the lack of irreparable harm, his motion for a temporary restraining order will be denied. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Since the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a statute, a preliminary injunction granted earlier by the court will be dissolved only as directed against the President and remain in effect against the other public officials. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

A motion claiming newly-discovered evidence but that actually alleges the new fact of the addition of the latrine and that seeks relief from an eighteen-month old order that denied injunctive relief is properly a second or renewed motion for injunctive relief, and the court considers the motion as such. Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The court will deny a second or renewed motion for injunctive relief when the addition of a latrine does not change the plaintiffs' likelihood of success on the merits because the court order they rely on was dissolved in 1995 and that dissolution was affirmed on appeal so that their likelihood of success remains at nil; when the addition of the latrine tends to shift the balance of possible injuries further away from the plaintiffs because removing the latrine would represent an additional onus on the defendant while its presence provides a device by which the effluvia of which the plaintiffs complain can be sequestered; when the addition of the latrine tends to help the public interest; and when the addition of the latrine does not increase the injury to the movants although this factor remains in their favor of Berman because the addition of the latrine changes little in the court's weighing of the factors, and what little it changes tends to favor Pohnpei. Berman v. Pohnpei, 18 FSM R. 67, 74 (Pon. 2011).

The power to grant injunctive relief is discretionary, and in considering a motion for a temporary restraining order, a court looks to: 1) the likelihood of success on the merits; 2) the possibility of irreparable injury to the moving party; 3) the balance of possible injuries; and 4) the public interest. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105 (Pon. 2011).

When the complained-about inaction on the part of the FSM Government has not changed since 1991 and when the applicable statute of limitations for such a claim is six years, the cause of action is barred and consequently, the court cannot grant injunctive relief. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105-06 (Pon. 2011).

In reviewing a motion for a preliminary injunction, the court weighs four factors: 1) the possibility of irreparable harm to the moving party; 2) the balance of injuries between the parties; 3) likelihood of success on the merits; and 4) the public interest. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

When each of the factors for injunctive relief weighs in the bank's favor, the court will grant the bank's motion for injunction and order the defendant to remove all statements alleging fraud on the bank's part, whether on the Internet or in hard copy, and refrain from making such statements until the bank's auction has been completed. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

When the court has enjoined the defendant from the activity that is the source of the bank's grievance

against him, the court will hold the show cause motion in abeyance until such time as the bank either requests a show cause hearing or withdraws the motion. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Preliminary injunctions do not have a preclusive effect since they are not decisions on the merits. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When a May 1991 interlocutory order and a March 1991 preliminary injunction were neither included in the 1995 final judgment nor made into a separate final judgment, they were overruled, superseded, or made irrelevant by the 1995 amended judgment dissolving the injunction even though the May 17, 1991 order was not explicitly mentioned in the judgment. They ceased to be valid orders. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. Berman v. Pohnpei, 18 FSM R. 418, 420 (App. 2012).

When affidavits are not attached to a motion for injunction during pendency of appeal but reference is made to affidavits filed earlier in the trial division that might be found in various places in the trial court record and when the other parts of the record that the movants deem relevant to their motion are also not attached to the motion, the movants have failed to comply with Appellate Rule 8(a)'s technical requirements. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the appellate court has not previously construed Appellate Rule 8(a)'s provisions about the issuance of injunctions, it may consult U.S. authority for guidance because FSM Rule 8(a) is drawn from a similar U.S. rule. Berman v. Pohnpei, 18 FSM R. 418, 421 n.2 (App. 2012).

Litigants should not lightly seek injunctions pending appeal. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

An appellate court, in ruling on a request for an injunction pending appeal, must engage in the same inquiry as when it reviews the grant or denial of a preliminary injunction, and in considering whether to grant a preliminary injunction, courts consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Generally, the purpose of an injunction pending appeal is to maintain the status quo while the appeal is heard and decided. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

Courts generally enter prohibitory injunctions – an injunction forbidding some act. Courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing such injunctions. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

In granting or refusing interlocutory injunctions, the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Perman v. Ehsa, 18 FSM R. 432, 435 (Pon. 2012).

The court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest.

Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

When all of the four factors weigh in the plaintiffs' favor, a preliminary injunction will issue. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 504 (Chk. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

To support a preliminary injunction, a movant must show that there is a reasonable probability of success on the merits and that irreparable injury will occur unless injunctive relief is granted to maintain the status quo until a final adjudication on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505-06 (Chk. 2013).

A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the plaintiff's application for a preliminary injunction is denied, the issue of whether he is entitled to a permanent injunction will await final adjudication on the merits. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

In granting or refusing interlocutory injunctions the court must set forth the findings of fact and conclusions of law which constitute the grounds of its action. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 566 (Pon. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, a court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

To support a preliminary injunction, a movant must show that there is a reasonable probability of success on the merits and that irreparable injury will occur unless injunctive relief is granted to maintain the status quo until a final adjudication on the merits. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When the court has weighed the four factors and found them to favor the issuance of a preliminary injunction to maintain the status quo, it may announce from the bench that the preliminary injunction will issue. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A court may issue a preliminary injunction where the following four factors are met and the exigencies of the situation demand such relief: 1) a substantial likelihood of success on the merits of the case; 2) a substantial threat of irreparable injury if the preliminary injunction is denied; 3) the benefit to the plaintiff in obtaining the injunction outweighs the harm the defendants will experience; and 4) granting the preliminary injunction will not disserve the public interest. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

The moving party bears the burden of proof in a motion for injunctive relief. Injunctive relief is preventative in nature and it is not necessary to wait for the actual occurrence of the injury. Narruhn v.

Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

A court may issue a preliminary injunction where the following four factors are met and the exigencies of the situation demand such relief: 1) a substantial likelihood of success on the merits of the case; 2) a substantial threat of irreparable injury if the preliminary injunction is denied; 3) the benefit to the plaintiff in obtaining the injunction outweighs the harm the defendants will experience; and 4) granting the preliminary injunction will not disserve the public interest. The moving party bears the burden of proof in a motion for injunctive relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

Injunctive relief is preventative in nature and it is not necessary to wait for the actual occurrence of the injury. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

When a final judgment has been entered on the merits, a preliminary injunction comes to an end and is superseded by the final order. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

The appellate court reviews the issue of whether a trial court erred in issuing, modifying, or denying an injunction by using the abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

An evidentiary hearing must be conducted before the abatement of a nuisance or injunction can issue (or be denied). This evidentiary hearing may be consolidated with the trial on the merits if the trial is advanced, but one must be held on the application for an injunction. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

A trial court decision issuing, modifying, or denying an injunction is reviewed using an abuse of discretion standard. A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Berman v. Pohnpei, 19 FSM R. 111, 114-15 (App. 2013).

The FSM Environmental Protection Act, 25 F.S.M.C. 501 *et seq.*, and its enforcement provisions, 25 F.S.M.C. 703-707, do not, as a matter of law, provide for a private cause of action or a citizen's claim for money damages but may support a claim for injunctive relief. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Neither the appellate nor the trial court could order the halt of all bar activity on a berm or the removal of a toilet or sleeping huts put there by private persons who are not parties and who are not national government employees but are members of the general public over whom the national government has no control and no right to exercise control. An injunction against the FSM would not affect the bar's operation or its patrons or their behavior. The trial court thus did not abuse its discretion when it denied issuing an injunction barring the public from using the berm and its allegedly illegal bar and party business. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

The trial court could not order a mandatory injunction for the FSM to issue an earthmoving permit to remove a berm when no one had applied to the FSM for one. While injunctions can be mandatory, mandatory injunctions are disfavored, and when the proposed mandatory injunction would require the FSM to issue an earthmoving permit to Pohnpei or to the Pohnpei Transportation Authority which would then be ordered to remove the berm and neither the state nor the PTA was a party to the case below, the trial court could not issue any orders directed to those non-parties. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124-25 (App. 2013).

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

When the public has a strong interest in seeing that the state's essential services are adequately funded and remain running and, to that end, that taxpayers are not allowed to ignore the state's tax laws and when the public also has an interest in seeing that the state does not overstep its bounds in imposing taxes or in levying execution on them, but when any tax paid under protest will, if the taxpayer prevails, be returned, there appears to be an adequate safeguard and the public interest factor will weigh in the state's favor. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

When a court decides not to issue a preliminary injunction in the plaintiff's favor, it does not mean that it is certain that the plaintiff will not prevail on the merits in a final judgment. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Where the court did not have personal jurisdiction over a person when it held a temporary injunction hearing and when it issued a preliminary injunction, the preliminary injunction can be vacated on that ground alone. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

A temporary restraining order cannot last for more than fourteen days and can be renewed only once for another fourteen days. If a temporary restraining order is issued and a preliminary injunction hearing is not held, the temporary restraining order expires. If the parties stipulate to its extension for a longer time, they have actually consented to a preliminary injunction. But even if no temporary restraining order is issued, the court can still set a hearing on a preliminary injunction and either grant or deny it. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Issuing both a preliminary injunction and a temporary restraining order at the same time makes no sense because a temporary restraining order is issued before a preliminary injunction is issued, not with one. A court cannot simultaneously issue both a preliminary injunction and a temporary restraining order. Nena v. Saimon, 19 FSM R. 317, 325-26 n.2 (App. 2014).

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

A court, in exercising its discretion in considering whether to grant a preliminary injunction, must weigh four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience between the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. A preliminary injunction's object is to preserve the status quo pending litigation on the merits. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

A weighing of all four factors would result in the denial of a temporary restraining order or of a preliminary when the plaintiffs are not threatened with irreparable harm, the most important factor and a prerequisite, and when the balance-of-injuries factor weighs heavily in the defendant's favor. Nena v. Saimon, 19 FSM R. 317, 329-30 (App. 2014).

Since the preservation of the status quo is a preliminary injunction's primary purpose, when the defendant's previous entry, use, and occupancy was the status quo, a preliminary injunction would have only enjoined the defendant from building any new structures on the land instead of ordering the defendant not to enter land he had been entering, using, and allegedly occupying for over a half century. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Permanent injunctions are only issued as a result of or as part of a final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

There are civil procedure mechanisms to address situations where the Kosrae State Court would be in the position of being asked to enforce contradictory judgments. Under Kosrae Civil Procedure Rule 60(b)(5), on motion and on such terms as are just, the Kosrae State Court may relieve a party or a party's

legal representative from a final judgment, order, or proceeding when a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. Thus, a party could be relieved from an inconsistent permanent injunction as a final order that it is no longer equitable that it should have prospective application. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 & n.7 (App. 2014).

In exercising its broad discretion in considering whether to grant a preliminary injunction, the court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

To obtain a temporary restraining order or a preliminary injunction, a petitioner must show: 1) the possibility of irreparable injury; 2) the balance of possible injuries between the parties; 3) the petitioner's likelihood of success on the merits; and 4) any impact on the public interest. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

While a temporary restraining order may issue without notice and expires within 14 days unless extended by the court for good cause or by consent of the restrained party, a preliminary injunction cannot issue without notice and usually remains in effect until a final determination on the merits. In re Estate of Setik, 19 FSM R. 544, 546 (Chk. S. Ct. Tr. 2014).

When each of the four factors favors denying a motion for a temporary restraining order, it will be denied. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

A motion to temporarily restrain an election will be denied as moot when that election was held as scheduled. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 647 n.1 (Chk. S. Ct. Tr. 2015).

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; the plaintiff's likelihood of success on the merits; and the public interest. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, and thus the issuance of injunctive relief is largely a matter of the facts of each situation and is thus a matter peculiarly for the trial judge's discretion. The object of seeking injunctive relief is to preserve the status quo pending the litigation on the merits. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

When the parties all agreed that since the court's last order confirming that the preliminary injunction remained in place, the defendants had been complying with the injunction and that therefore, except possibly for some damages that might have accrued, there was no need to proceed on the show cause motion because it was moot. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

Injunctive relief will be denied when the movants seek to enjoin the ongoing development and perceived deleterious effect on a parcel of property, the certificate of title for which is properly held by the individual undertaking the renovation and when the court-approved sale of this piece of real estate was proper, as it constituted an asset of the debtor corporation which could, under 6 F.S.M.C. 1410(2), be sold with payment of the net proceeds to the plaintiff in satisfaction of the outstanding judgment. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 105 (Chk. 2015).

In exercising its broad discretion in deciding whether to grant a preliminary injunction, the court must

consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Mailo v. Lawrence, 20 FSM R. 201, 203 (Chk. 2015).

When, weighing the four factors, the court does not find enough in the movant's favor to grant a preliminary injunction, the request for a preliminary injunction will be denied and the current temporary restraining order dissolved. Mailo v. Lawrence, 20 FSM R. 201, 205 (Chk. 2015).

A court, in exercising its broad discretion in considering whether to grant a temporary restraining order, must weigh four factors: 1) the possibility of irreparable injury to the movant; 2) the movant's likelihood of success on the merits; 3) the balance of possible injuries or inconveniences between the parties; and 4) the impact of any requested action upon the public interest. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 550 (Pon. 2016).

When a temporary restraining order enjoins the conduct, endorsement, or coordination of any further commercial sea cucumber harvesting in Pohnpei waters and the sale or purchase of sea cucumbers harvested in Pohnpei waters, it may also provide that any sea cucumber already harvested before the order's date may be sold and purchased pursuant to the laws and regulations and that any sea cucumber coming into the buyer's possession which was harvested before the order's date may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 553 (Pon. 2016).

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

In an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

In exercising its broad discretion to decide whether to grant a preliminary injunction, a court will consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

Although all four factors do not have to weigh in the applicant's favor for an applicant to be granted a preliminary injunction, when all four factors do favor the preliminary injunction's issuance, the preliminary injunction motion will be granted. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

– Injunctions – Balance of Injuries

In evaluating the balance of possible injuries factor, a court compares the threatened harm to each party if the requested injunctive relief is granted or if it is denied. Carlos Etscheit Soap Co. v. Epina, 8 FSM

R. 155, 162 (Pon. 1997).

When a $7,000 loan had been taken out to build a house on now disputed land, the construction is complete except for the roof, and the repayment of the loan plus interest is underway, the balance of injury criterion weighs determinatively in the home builder's favor and the temporary restraining order enjoining further construction will be dissolved. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

When the defendant has no valid counterclaim for unfair competition under a common law theory, and the plaintiff is likely to prevail in at least some of its claims, the balance of harms favors the plaintiff. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 419 (Pon. 2001).

The balance of injuries weigh in the movant's favor when it stands to lose its significant investments in the cellular telecommunications tower's construction and the start-up of its cellular telephone system in Chuuk should the tower be tampered with or removed, and when the plaintiffs, should they prevail on the merits, are in a position to recover the land and have it restored to the condition it was in before the tower was built there and they were not making any particular use of the land before the tower was put there. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

When the plaintiffs claim serious and irreparable damage to their land and crops from the state due to its trespass, clearing, grading and quarrying related activities on the site and the state has failed to demonstrate why a delay of a few more weeks in producing gravel would result in irreparable harm to the state, the balance weighs in favor of granting relief for the plaintiffs. Sigrah v. Kosrae, 12 FSM R. 513, 520 (Kos. S. Ct. Tr. 2004).

When, if injunctive relief is denied, the plaintiff will continue to experience interference with her development of the subject parcels as defendants will continue to occupy those parcels, and, if injunctive relief is granted, the defendants will suffer injuries and inconveniences by being forced to vacate the parcel and losing resources for residence and farming and the plaintiff seeks court assistance only years after obtaining title to the subject parcels, and has allowed the defendants' activities to continue until this request for injunctive relief and the defendants rely upon the land for farming and food resources and claim that an immediate removal would cause substantial hardship, the balance of possible injuries or inconveniences to the parties weighs in the defendants' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299-300 (Kos. S. Ct. Tr. 2005).

When the plaintiff will continue to experience interference with her development of the subject parcel as defendants will continue to access and utilize the parcel, and, if injunctive relief is granted, the defendants may continue to suffer damage to their gravesite and the surrounding area, the balance of possible injuries or inconveniences to the parties weighs in favor of granting injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

When to disturb the status quo now would only cause irreparable harm to the movants and little harm would come to the defendant from maintaining the status quo and any damage to the defendant would be compensable by reasonable money damages, the balance of the injuries weighs in the movants' favor. Ruben v. Petewon, 13 FSM R. 383, 391 (Chk. 2005).

In evaluating the balance-of-injuries factor, the court must compare the threatened harm to each party if injunctive relief is granted or denied. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163 (Pon. 2006).

The balancing of the harm to the parties favors the PPA plaintiffs when there is none resulting to the defendants, since they would be enjoined from engaging in conduct that is inconsistent with applicable state law, but the harm to plaintiffs is that they would effectively be compelled to act inconsistently with applicable state law and would be subjected to the potential consequences of doing so and that the PPA general counsel's handling of current court matters would also be potentially delayed and affected to PPA's detriment. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

When the movant's alleged harm is that which flows from his inability to meet one of his creditor's valid demands, it is not the sort of harm, standing alone, for which injunctive relief is intended as a remedy; and when if the port authority is enjoined from its enforcement efforts, it will suffer harm by being enjoined from carrying out its legal obligations under state law to manage Pohnpei's port facility, the balance-of-the-injuries factor favors the port authority. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

The balance of possible injuries favors the movant when its possible injuries are numerous and, in some respects, onerous and when the only possible injury to the State is that it would, during the pendency of the case, be precluded from creating a new source of revenue and this harm would be almost completely alleviated by the requirement of a bond in the approximate amount of what sums it would have collected on the tax while the case is pending and when such security will be required. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

The balance of injuries favors freezing the Tolensom CIP funds that have already been remitted by the national government when, if the funds are frozen there will be no injury to the national government defendants and the injury to defendants who are officers in the purported Tolensom municipal government that currently has those funds, is not onerous since, as purported municipal officials, it is their duty to preserve municipal funds from unwarranted claims and since, at worst, it may only delay payment of some Tolensom municipal obligations. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the Election Commission has ordered a revote and that order has been appealed, the relative harm to each party, or even that either party faces an impending harm at all, is difficult to fathom. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the movant's potential and possible injuries are more imminent and lasting than any injury to the defendant from an injunction prohibiting, until after the sale of the lot, publication of allegedly defamatory statements – the injunction would be a lesser injury than the injury to the movant if it could not conduct the sale or if the bidders lower their bids or decline to attend the auction. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

The balance-of-injuries factor will not weigh in the movants' favor when the movants ask that Pohnpei be ordered to take certain actions against non-parties at an unknown cost and with an unknown exposure by Pohnpei to potential liability to those non-parties while leaving the movants free of any expense or liability. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

The balance-of-injuries factor favors the plaintiffs when the Governor's possible injury is slight since the Governor is not injured by an injunction prohibiting him from doing what he does not have the power to do. Since the Board members' terms end soon and the Governor has already nominated their replacements, the harm to the plaintiffs is much greater because the General Manager has been prevented from exercising, as required under state law, the duties and responsibilities of his office, as have the Board members. Perman v. Ehsa, 18 FSM R. 432, 439-40 (Pon. 2012).

The balance-of-harms factor favors the defendant when the harm that it would suffer is that it would receive 16⅔% less revenue than it had expected or budgeted for on the basis of the 3% contribution it has been collecting instead of the 2½% that the plaintiff asks the court to enforce and when the harm to the plaintiff is the extra ½% contribution he is paying which could be credited to future health insurance premium contributions if found unlawful. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

In evaluating the balance-of-possible-injuries factor, a court compares the threatened harm to each party if the requested injunctive relief is granted or if it is denied. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The balance-of-harms factor favors the plaintiffs when a defendant has hired a few local employees

and readied a container for shipment to Pohnpei and is not irreparably harmed because it apparently can use an alternate site; when the defendant State is not harmed if as long as there is a tenant on the site running the fish processing facilities using local employees; and when the plaintiffs will be irreparably harmed and they also employ 110 local hires. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567-68 (Pon. 2013).

When the Commissioners' travel authorization was for travel originating in Chuuk on March 1, 2013, and therefore, any prior expenditure of funds, not directly attributable to the travel, cannot be then ascribed to a preliminary injunction's issuance; when the status quo for state government travel is to purchase full fare tickets which are therefore refundable with a minimal fee imposed and when hotel accommodations and car rentals are generally fully refundable given twenty-four hour notice and other costs associated with the election can generally be transferred to the parties that will travel in place of the Commissioners; when the Commissioners' impartiality is necessary to protect the elections' integrity while protecting the plaintiff candidates' and other individuals' fundamental rights; and when the Commissioners stated that they will attempt to be "honest" but that alone is insufficient because impartiality is required, the balance of the equities tips overwhelmingly in the plaintiffs' favor to enjoin the Commissioners' travel to supervise polling places. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588-89 (Chk. S. Ct. Tr. 2013).

In evaluating the balance-of-injuries factor, a court must compare the threatened harm to each party if injunctive relief is granted or denied. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

When the irreparable-harm factor does not favor the movant, the balance-of-injuries factor does not favor him either. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 156 (Chk. 2013).

Since the balance-of-the-injuries factor is about the balance of possible injuries, the trial court was, in addition to considering the harm to the plaintiffs, required to also consider the possible injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

Removal of someone from land that person has used or occupied for over 60 years is, on balance, a much greater harm than the plaintiffs having to wait a relatively short time before the litigation is over to fulfill their desire to now develop the land that they have not tried to develop for the last 60 years. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

The balance-of-injuries factor favors a plaintiff who is faced with irreparable harm by the state dredging his remaining unfilled tideland while the harm to the state is not so great since it must only find and use some other site, including the nearby tideland to dredge the coral it wants to use for road maintenance and sale. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

With respect to the balance-of-possible-injuries requirement, when any potential harm suffered by the petitioner is minimal considering that she cannot establish a likelihood of success on the merits, the nonmovants would bear the risk. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

A defendant is harmed by having to defend a lawsuit in which it has no real interest and while the plaintiff's harm may be considerable, it is one of its own making when it choose the FSM Supreme Court as the forum and the FSM Secretary of Finance as the party from which to seek relief. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The balance of the injuries weighs in the movants' favor when to disturb the status quo to allow continued sea cucumber harvesting would only cause irreparable harm to the movants and when the harm that would come to the defendants from maintaining the status quo would be compensable by reasonable

money damages, except for the potential harm to one defendant's international business reputation, which is less as weighed against the potential harm to the movants since the temporary restraining order will remain in effect for only fourteen days and its fisheries resource license provides until April 2017 to complete the fourteen-day open harvest season. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551-52 (Pon. 2016).

The balance-of-possible-injuries factor favors the plaintiff when the plaintiff spent $200,000 in order to acquire a leasehold on an adjoining lot so that it may expand its operation, but is not able to actually proceed with its expansion or to have its sizeable expenditure refunded and the defendant's potential injury is not being able to use the far end of the lot to run a small store, which if the alleged contract breach is cured, would be further ameliorated by $5,000 quarterly payments to the defendant. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

– Injunctions – Bond

Chuuk State Supreme Court Rule of Civil Procedure 65(c) requires security for the issuance of a temporary restraining order. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 105 (Chk. 1997).

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A party may apply for a preliminary injunction, but no preliminary injunction will issue except upon the giving of security by the applicant, in such sum, if any, as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262g (Pon. 2002).

Civil Procedure Rule 65(c) requires security for the issuance of a temporary restraining order. A motion for a temporary restraining order may be denied for not complying with Rule 65(c)'s requirement that the applicant give security before the issuance of a restraining order or preliminary injunction. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

The balance of possible injuries favors the movant when its possible injuries are numerous and, in some respects, onerous and when the only possible injury to the State is that it would, during the pendency of the case, be precluded from creating a new source of revenue and this harm would be almost completely alleviated by the requirement of a bond in the approximate amount of what sums it would have collected on the tax while the case is pending and when such security will be required. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

Under Civil Procedure Rule 65(c), no preliminary injunction can issue except upon the giving of security by the applicant, in such sum, if any, as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The security, if ordered, may be in the form of a cash bond, or an irrevocable letter of credit, or an insurance company surety bond, or some other form of security if the defendants find that form acceptable, and if a cash bond is provided, the cash will be placed in an interest-bearing account with the interest to ultimately go to whoever receives the principal. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

When the injunction will consist of freezing Tolensom municipal CIP funds no bond will be necessary and the movants will not be required to post a cash bond as the security for such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained since the damages would be the inability to use those funds and, if defendants prevail, then those funds would be released for Tolensom municipal use. Marsolo v. Esa, 17 FSM R. 377, 382 (Chk. 2011).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

When the movants offered to provide a bond for the preliminary injunction in whatever amount the court deemed necessary and when the defendant did not ask for bond or specify any certain amount or even comment on the point, a bond will be required, but because of the injunction's preliminary nature and because much of the injunction may become obsolete once a new PUC Board takes office in the near future and starts to exercise its functions, the court will require a bond of only $1,000 to be tendered within ten days. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

Under Civil Procedure Rule 65(c), no preliminary injunction can issue except upon the applicant giving of security, in such sum, if any, as the court deems proper, for the payment of such costs and damages as are incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court's discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

Rule 65(c) gives the court discretion in setting the bond amount for a temporary restraining order. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

A preliminary injunction should not issue unless the applicant has given security, in such sum, if any, as the court deems proper, for the payment of such costs and damages as are incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, and the parties may agree to the amount. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

– Injunctions – Irreparable Harm

A prerequisite for the granting of injunctive relief is that the party seeking protection must be faced with the threat of irreparable harm before conclusion of the litigation unless the injunction is granted, and if money damages or other relief upon conclusion of the litigation will fully compensate for the threatened interim action, then the preliminary injunction should be denied. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 276 (Pon. 1986).

To obtain a temporary restraining order there must be a clear showing that immediate and irreparable injury or loss or damage would occur otherwise. An injury is not irreparable if there is an adequate alternative remedy. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

In requesting a Temporary Restraining Order a plaintiff has to show that his damage will be irreparable, that is, that it cannot be remedied in any way except by the rather drastic measure of a restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

In order for injunctive relief to be granted, the party seeking protection must be faced with the threat of irreparable harm before the conclusion of the litigation unless the injunction is granted. If money damages or other relief will fully compensate for any threatened interim harm, the preliminary injunction should be denied. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 161 (Pon. 1997).

A threat of irreparable injury exists when threats of physical violence and assertion of control over land deprives plaintiffs of access to their land in a way that money damages or other relief cannot completely compensate for. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 162 (Pon. 1997).

In order for the court to issue a temporary restraining order, the party seeking the order must show that

he will suffer irreparable injury, and that the only remedy is the somewhat drastic one of a restraining order. Irreparable injury is that for which there is no adequate alternative remedy. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

An injury which tends to destroy an estate, such as the construction of a concrete house on disputed land, will be treated as an irreparable injury justifying the issuance of a temporary restraining order. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

Irreparable harm for the purpose of issuing an injunction may be found when, although there is no immediate or certain loss to the plaintiff if a preliminary injunction is denied, if an injunction is not issued all the remaining funds may be obligated without any limitation. So the irreparable harm is that the plaintiff does not have the opportunity of possibly obtaining any of the unobligated funds. Thus, when the other three factors clearly tend towards the issuance of the injunction and to deny the preliminary injunction would be to tell the plaintiff that it must apply and get any appropriations that it can by following unconstitutional steps, the preliminary injunction will issue. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The loss of goodwill, loss of customers and potential customers, lost sales, and similar harms, are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent because economic damages based on such harms are extremely difficult to calculate. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

For the court to issue a preliminary injunction, the party seeking protection must be faced with the threat of irreparable harm before the conclusion of the litigation unless it is granted. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113-14 (Kos. S. Ct. Tr. 2002).

Constant and excessive noise caused by refrigerator fans operating on and off for 24 hours a day, although extremely difficult to quantify, can constitute irreparable injury. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

Although a party has shown that he is suffering a continuing irreparable injury due to the operation of refrigeration machines, the court must consider the harm that the issuance of an injunction would cause to the other party before it can issue an injunction. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

Irreparable injury may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms because they are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent since economic damages based on such harms are extremely difficult to calculate. Yang v. Western Sales Trading Co., 11 FSM R. 607, 616 (Pon. 2003).

An entity is not irreparably injured by an injunction which prohibits it from accusing another of unsubstantiated illegal conduct, and threatening unspecified legal action against those who purchase goods from the other. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

The first requirement for the issuance of a temporary restraining order is that it clearly appear from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. This requirement has not been met when it is not clear that immediate and irreparable injury will result to the applicant by virtue of the agency's hearing proceeding as scheduled because even if the agency ruled against him at the hearing, he has a number of options at his disposal in regards to any agency decision. The possibility that the agency might issue an adverse decision does not constitute the immediate and irreparable injury to the applicant required for the issuance of a restraining order. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 127 (Pon. 2003).

Significant irreparable injury and loss to the movant may be found when its tower would be tampered with or removed and the cellular telephone system shut down and when the plaintiffs do not appear to have the financial resources to adequately compensate it if the tower were removed and if such removal were later determined to be improper or unlawful. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

An injury which tends to destroy an estate will be treated as an irreparable injury justifying the issuance of a temporary retraining order. Clearing, bulldozing and grading land, damage and destruction of crops are injuries which tend to destroy an estate, and are accepted as irreparable injuries. Sigrah v. Kosrae, 12 FSM R. 513, 520 (Kos. S. Ct. Tr. 2004).

The granting of injunctive relief requires the possibility of irreparable injury. Permanent damage to property is irreparable injury. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When the plaintiffs do not allege a specific irreparable injury and when they seek injunctive relief to stop the defendant's interference and potential disconnection of electricity from the subject parcel, but they fail to show how these actions will result in irreparable injury, the disconnection of electricity, without more, does not constitute irreparable injury and the possibility of irreparable injury weighs in the defendant's favor. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

The essential requirement for the issuance of a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted. In requesting a temporary restraining order, a plaintiff must show that his damage will be irreparable, that is, that it cannot be remedied in any way except by the drastic measure of a restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

When a congressional candidate seeks the issuance of a temporary restraining order prior to balloting he will be denied since he cannot show irreparable injury because the Election Code provides an aggrieved candidate with sufficient alternate and adequate remedies. When the election law provides for remedies that have not yet been used a candidate cannot show the irreparable harm necessary for the issuance of a temporary restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. Asugar v. Edward, 13 FSM R. 209, 212-13 (Chk. 2005).

The party seeking injunctive protection must be faced with irreparable harm before the conclusion of the litigation. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

When, although the plaintiff has waited nearly 20 years since she has been awarded title to the land before bringing this action, any of the defendants' future actions to plant crops or conduct burials on the subject land will constitute irreparable harm, the plaintiff has shown potential irreparable harm to the subject parcels by defendants' future actions and this factor weighs in the plaintiff's favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

The party seeking protection must be faced with irreparable harm before the litigation's conclusion. There must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

When the defendants have completed a burial and gravesite and continue to care for the gravesite on the parcel; when the plaintiff is unable to develop the parcel while the defendants utilize the parcel; and when the defendants would suffer immediate and irreparable harm due to plaintiffs' damage to the defendants' graves on the subject parcel, the court will conclude that both the plaintiff and the defendants have shown irreparable harm to the subject parcel and the gravesite by their actions. This factor weighs in favor of granting injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

To have a certificate of title to and one judgment for a property in their favor, but to have another judgment enforced against them which they are told they cannot challenge because they are not parties to it and that they cannot be made parties and never had notice or an opportunity to be heard before that other judgment was originally entered, and to now have no opportunity to be heard and contest either the merits or the enforcement of that other judgment, is an irreparable injury. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

Irreparable harm is the single most dispositive factor in determining whether injunctive relief should be granted. Irreparable harm is harm that cannot be remedied in any way except by the rather drastic measure of a restraining order. Stated another way, irreparable injury is that for which there is no adequate alternative remedy. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

An injury cannot accurately be deemed irreparable when the court concludes that money damages would fully compensate the plaintiff for any loss it has sustained since the claimed loss is neither uncertain nor impossible to calculate because the containers rent for $1.25 per day and, even if all of the containers have each container has a replacement value. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 162 (Pon. 2006).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The essential requirement to obtain a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted – the plaintiff must show that his damage will be irreparable – that it cannot be remedied in any way except by the drastic measure of a restraining order. An injury is not irreparable if there is an adequate alternative remedy. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

When the movant could seek relief from judgment under Chuuk Civil Procedure Rule 60(b) or he could appeal and seek a stay pending appeal by having the sum garnished paid into the state court's registry to remain there until the outcome of any appellate proceedings, he has adequate legal remedies and injunctive releif will be denied. Furthermore, injunctive relief should be denied when money damages or other relief upon the litigation's conclusion will fully compensate for the threatened interim action. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

The essential requirement to obtain a temporary restraining order is that the applicant must clearly show that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted – the plaintiff must show that his damage will be irreparable – that it cannot be remedied in any way except by the drastic measure of a restraining order. An injury is not irreparable if there is an adequate alternative remedy. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

In order for the court to grant a temporary restraining order it is essential that there is a clear showing that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not

granted. Irreparable injury means there is no adequate alternative remedy. Bisaram v. Suta, 15 FSM R. 250, 253-54 (Chk. S. Ct. Tr. 2007).

There may be cases in which the court would enter an election matter before the election process has been completed. But when, assuming the plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount or to aside the election, the plaintiff has not demonstrated that he is in danger of immediate, irreparable harm. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

The Pohnpei Port Authority has demonstrated irreparable injury by showing that the Governor's February 22, 2008 executive directive would require it to act inconsistently with the applicable state statutes because it purports to assert authority – that of obtaining legal counsel for PPA – that only PPA, acting by its general manager, may assert and it also potentially impairs the general counsel's contract with PPA by unilaterally terminating it and because, even though PPA may use the services of Pohnpei government attorneys to serve as PPA attorneys, this decision clearly lies with the PPA pursuant to its enabling statute and a decision to use the Pohnpei Attorney General's Office may not be imposed by an executive directive inconsistent with applicable state law. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

When, if the Governor should remove any Pohnpei Port Authority board member without cause, that member would have recourse in the courts and thus the injury in that case would not necessarily be irreparable; when the Governor does not have authority to terminate PPA's general manager or general counsel because the authority to terminate PPA's general manager rests by law with the PPA Board and the authority to terminate PPA's general counsel rests by law with the PPA general manager; and when, if the Governor demands that the PPA Board do this, those with the legal authority to take such actions may simply refuse to do so, the threatened injuries – the Governor forcing the PPA Board to summarily remove the PPA general manager and general counsel and/or forcing the Board to resign under threat of removing the Board and in retaliation of being sued, thereby disrupting PPA's operations – are not immediate, concrete or irreparable, especially since the PPA Board has decided that they will not submit their resignations and they will not take any action toward terminating the general manager and the general counsel. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 566 (Pon. 2008).

When the threatened injuries set forth in the plaintiff's supplement are not sufficiently certain, immediate, and irreparable to justify the injunctive relief requested and the other three factors for a TRO do not sufficiently support the issuance of any further injunctive relief in addition to the TRO already issued and extended, further injunctive relief pursuant to the supplement will be denied. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 563, 567 (Pon. 2008).

When the port authority's actions reflect its valid efforts to regulate the use of port facilities, and to collect fees imposed for that use, any financial loss resulting to the movant is a type fundamentally different from the sort necessary to a showing of irreparable harm under FSM Civil Rule 65(b). Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when

he has the election appeal process available to him through which he could properly seek redress. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

A movant faces irreparable injury when, if no injunction is issued the movant must then inform all of the world's computer passenger reservation systems of the special pricing requirements for paying passengers leaving Chuuk and must then compensate those reservation systems for their reprogramming expenses; when, for its cargo or freight shipping service, a new computer software, whose cost is very substantial, would need to be written and installed; when these costs are not recoverable if the movant should prevail (although new computer software for cargo may have some benefits of its own); and when other costs – compliance costs, tax collection costs, remittance costs – would also not be recoverable if it prevails. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 161 (Chk. 2010).

Irreparable injury may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms since they are not readily compensable by money damages, and thus are precisely the type of harm a preliminary injunction is intended to prevent because economic damages based on such harms are extremely difficult to calculate. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

An irreparable and certainly unquantifiable harm would occur if Continental collected the service tax, the tax was ruled unlawful, and Continental was then faced with the difficult, if not insurmountable, task of refunding the tax charge to all the passengers from whom it had collected the unlawful tax, and it then would also face a second set of reprogramming costs to change the world's computer reservation systems back to their previous state by deleting the new special Chuuk tax codes. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

If Continental does not comply with Chuuk's demands that it start collecting the tax immediately, it and its employees face civil and criminal penalties, which would constitute irreparable harm if imposed and if Continental then prevailed on the merits. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

A movant has not made a showing that irreparable injury will occur if injunctive relief is not granted when his complaint seeks only money damages since if money damages will fully compensate for the threatened interim action, then the preliminary injunction should be denied because, under such circumstances, the injury cannot accurately be deemed irreparable. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 279 (Chk. 2010).

When the national government has already remitted Tolensom's share of the residual CIP funds to a bank account controlled by one of the two purported mayors and municipal governments of Tolensom, irreparable harm would occur if these funds were spent and it later turned out that those expenditures were not made to satisfy the Tolensom municipal government's rightful obligations but were spent by an entity purporting to be the Tolensom municipal government for purposes not authorized by the proper Tolensom municipal government. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When the election law provides for remedies that have not yet been used, a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

Since section 131 of Chuuk State Law No. 3-95-26 provides for trials in the Chuuk State Supreme Court Appellate Division when review of Election Commission decisions regarding contested elections is sought and since the plaintiff has availed himself of that remedy, he cannot show irreparable harm. But a court must weigh three factors other than irreparable harm when considering injunctive relief – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – and when none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the trial court is without jurisdiction to either decide or second guess the reasoning underpinning future appellate division decisions and, whatever the results of the revote, neither party is likely to suffer a harm of such import that cannot potentially be redressed through the procedures set forth under our laws. The plaintiff does not stand to lose anything of a magnitude so great as to justify issuance of an order enjoining the election from taking place at all because if the defendant prevails in the appeal, there may be utility in the revote and if the plaintiff prevails in the appeal, the revote becomes a nullity. Under either scenario, the results of the revote may be administratively and, if necessary, judicially appealed. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief. When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Since either expectancy damages (lost profits) or reliance damages should make GMP whole on its counterclaims against the FSM, the court cannot find that the harm will be irreparable even if Compact funds are expended instead of enjoined since there will still be a source of funds from which to pay any damages awarded because the FSM has other revenue sources and the court is unaware of any judgment against the FSM that has ever gone unpaid. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 593 (Pon. 2011).

Irreparable harm may include the loss of goodwill, loss of customers and potential customers, lost sales, and similar harms because they are not readily compensable by money damages. The court does not need to compute the exact degree to which the movant will suffer loss of goodwill, customers and potential customers when the other party clearly intends to cause it to suffer these harms. Since the court need only examine the possibility of irreparable harm, not merely the probability, it is enough that the movant has suffered harm and that the party to be enjoined intends irreparable harms. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

One who seeks an injunction pending appeal must show irreparable injury. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When what the movants seek to enjoin is not trespass and nuisance on their land but on a causeway or berm which is not their land and when the trial court denied their initial motion for injunction on January 7, 2009, they did not appeal that denial as they could have under Appellate Rule 4(a)(1)(B), the movants have not shown irreparable harm or injury. Berman v. Pohnpei, 18 FSM R. 418, 421-22 (App. 2012).

In order for a party to obtain injunctive relief, it must be faced with the threat of irreparable harm before the litigation is concluded. Irreparable harm is harm that cannot be fully compensated by money damages. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

Irreparable harm exists when the Governor is exercising, through an executive order, power that applicable state law firmly vests in the PUC Board and in the PUC General Manager that the Board hires and supervises because money damages cannot remedy these harms. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When a plaintiff seeks to enjoin payment of money to a defendant, money damages ought to constitute full compensation if the payments are later held unconstitutional. The perceived difficulty in obtaining a refund from the defendant would not make the threatened injury irreparable because the defendant could easily accommodate any refunds to the enrolled wage-earners by allowing them credits on future premium payments. On this ground alone the preliminary injunction application can be denied. Mailo v. Chuuk

Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

Irreparable harm is the single most dispositive factor in determining whether injunctive relief should be granted. Irreparable harm is harm that cannot be remedied in any way except by the rather drastic measure of injunctive relief, that is, irreparable injury is a harm for which there is no adequate alternative remedy. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, but if money damages will fully compensate for the threatened interim action, there is no irreparable harm and a preliminary injunction should be denied. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

A plaintiff will be irreparably harmed when the disruption to its business by having to vacate the site in February 2013 will cause it the loss of goodwill and loss of customers and potential customers, for which monetary damages are extremely difficult to measure and it will also be irreparably harmed if not given the time (90-120 days) to relocate its business and its movable assets and inventory to another suitable location, which currently cannot be found on Pohnpei. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

If an injunction is not issued, a plaintiff will suffer irreparable harm because if another company moves onto the site it will be very difficult to then remove that company and move onto the site and because it would then also be difficult to get the business running quickly on that site if the current tenant's movable assets are no longer there. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

Since the deprivation of a fundamental right outweighs any threatened harm that an injunction might cause a defendant, the plaintiffs have shown that they are likely to suffer irreparable harm in the absence of a preliminary injunction when the Election Commissioners are scheduled to fly out on March 1, 2013, to conduct the March 5, 2013 elections, which is a clear demonstration of an imminent harm and the harm is actual as the harmful conduct will occur allowing for the Commissioners to bathe in the appearance of impropriety constituting irreparable harm. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587-88 (Chk. S. Ct. Tr. 2013).

When, under the State Tax Act, amounts paid under protest must be kept and deposited in a separate and restricted account which must be returned to the taxpayer if he prevails and since any funds levied by the state to pay the movant's assessed tax liability are rightly considered partial payments under protest and are therefore deposited into "a separate and restricted account," it does not seem that the movant will be irreparably harmed if an injunction does not issue because the return of his money would seem to adequately compensate him. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, but when money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

The party seeking a preliminary injunction must be faced with irreparable harm before the litigation's conclusion and there must be a clear showing that immediate and irreparable injury or loss or damages would otherwise occur, and there must be no adequate alternative remedy. When money damages or other relief will fully compensate for the threatened interim action, a preliminary injunction should be denied. Nena v. Saimon, 19 FSM R. 317, 328-29 (App. 2014).

When the trial court did not make any findings that would support the idea that the plaintiffs would suffer irreparable harm if the preliminary injunction did not issue and when it probably could not find that the plaintiffs faced irreparable harm when the plaintiffs did not specify how they intended to develop the land and how the defendant's presence would thwart that development, and since the threat of irreparable harm

before the litigation's conclusion is a prerequisite to preliminary injunctive relief, the preliminary injunction should not have been issued because the plaintiffs did not face irreparable harm. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief. When money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

The possibility that the FSM Court will issue an order denying stay motions and/or affirming on appeal the decision to sell the property does not constitute the possibility of irreparable injury required for the issuance of a temporary restraining order. An unwelcome outcome is among the everyday risks of litigation and does not constitute irreparable injury for purposes of a temporary restraining order. In re Estate of Setik, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

The sale of the property does not create irreparable harm when it can be fully remedied with money damages if the petitioner is ultimately able to prevail on appeal and reverse the sale order. In re Estate of Setik, 19 FSM R. 544, 547 (Chk. S. Ct. Tr. 2014).

A temporary restraining order motion will be denied when the movant has failed to meet his burden to show that irreparable injury/harm would result from denial of the temporary restraining order. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Irreparable harm could occur if a preliminary injunction is not granted since the plaintiff's remedy, if successful, is her reinstatement as Director, and since, if another person is nominated and confirmed as the Director of Education in the meantime, the Department and the State would be in the untenable position of having two Executive Directors simultaneously. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

The harm to the petitioner may not be irreparable when there is an adequate remedy, both legal and equitable, in a different forum. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The threat of irreparable harm before the underlying litigation's conclusion is a prerequisite to preliminary injunctive relief and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction or temporary restraining order should be denied. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 550-51 (Pon. 2016).

Irreparable harm may be threatened when, once the sea cucumber population is significantly impacted, it will take several years for the population to recover, if at all, and when the very nature of the surrounding ecosystem will suffer negative consequences as a result. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

Harm to land is often considered irreparable because land is unique. The same should hold true of the reef and surrounding environment where harvesting is to occur as well as the precious population of sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The threat of irreparable harm before the litigation's conclusion is a prerequisite to preliminary injunctive relief, and when money damages or other relief will fully compensate for the threatened interim action, irreparable harm does not exist and a preliminary injunction should be denied. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

A harm involving land is often considered irreparable since land is unique. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 126 (Chk. 2017).

The harm is irreparable when there is no other suitable or equivalent adjacent or adjoining property into which the movant might be able to expand its facilities and when the landowner does not have the present ability to return the lease payment. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 127 (Chk. 2017).

– Injunctions – Likelihood of Success

The fact that the party moving for preliminary injunction relief does not appear more likely than not to succeed on the merits is a factor weighing against granting of such relief but it is only one of four factors and is not necessarily determinative when the other factors point toward such relief. Ponape Transfer & Storage v. Pohnpei State Public Lands Auth., 2 FSM R. 272, 278 (Pon. 1986).

A court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, nonfrivolous issues. Ponape Enterprises Co. v. Bergen, 6 FSM R. 286, 289 (Pon. 1993).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq*. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 417 (Pon. 2001).

Where the issue is whether the defendant's actions were a good faith effort to protect a legally cognizable interest under FSM law, when it had no standing to enforce this particular law, and where the defendant not only does not have a legally cognizable interest under FSM law, but also its actions were not in good faith, the plaintiff's likelihood of success in this case weighs in favor of granting the preliminary injunction. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 418-19 (Pon. 2001).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 113 (Kos. S. Ct. Tr. 2002).

When the party seeking an injunction has made out a prima facie case for nuisance against the other, the likelihood of success on the merits factor weighs in favor of the issuance of an injunction. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262i (Pon. 2002).

When the court has before it no evidence that the plaintiff acted unlawfully or that the defendants' actions were justified, the likelihood-of-success factor weighs in favor of granting a preliminary injunction. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

With regard to the movant's possibility of success on the merits, its actions to construct a cellular telecommunications tower only after undertaking a survey and a search of land commission records on the property where the tower is now located, and after obtaining an easement, demonstrates that it acted

prudently before proceeding with the tower's construction. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

As to the likelihood of success on the merits, a court may grant injunctive relief so long as the movant's position raises serious, non-frivolous issues. A court may grant injunctive relief even if the moving party is not more likely than not to prevail, so long as the plaintiffs' position appears sufficiently sound to raise serious non-frivolous issues. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

As to the likelihood of success on the merits, a court may grant a preliminary injunction so long as the movant's position raises serious, nonfrivolous issues. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When the plaintiffs' predecessor in interest no longer held title to the parcel in April 2002, when he wrote his will, he could not transfer any interest in the parcel, by will or otherwise, to the plaintiffs or to anyone else and therefore the plaintiffs do not have likelihood of success on the merits. This factor weighs strongly in the defendants' favor. Benjamin v. Youngstrom, 13 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2004).

Since a certificate of title is prima facie evidence of ownership and courts are required to attach a presumption of correctness to a certificate of title, a plaintiff with a certificate of title is presumed to be an owner of the subject parcels and thus the factor of the likelihood of success on the merits weighs in the plaintiffs' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not presented a certificate of title for the subject parcel, but has presented a determination of ownership that is more than ten years old and the defendant claims that he is the owner of the subject parcel through a land exchange completed with the late land owner and that a transaction was completed to transfer title of the exchanged parcels, the plaintiff's likelihood of success on the merits is unclear, based upon lack of clear representation of all the heirs, based upon lack of conclusive title through a certificate of title, and based upon the defendant's claim to title of the subject parcel through a land exchange. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

While it is entirely likely that non-parties could succeed on the merits of an action seeking an injunction without ever being parties in another case with a judgment because failure to join an indispensable party may subject a judgment to collateral attack, there are those rare cases where intervention is timely under Rule 24 even though it is after entry of judgment. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A holder of a certificate of title derived from another certificate of title that was litigated has a good chance of success on the merits in a dispute over title. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A contention that a movant has no likelihood of success on the merits plainly fails when the movant has succeeded on the merits because the court has granted the movant's summary judgment motion and determined that it has a valid lease for the land. Therefore the movant's motion to amend the preliminary injunction will be granted. Mailo v. Chuuk, 13 FSM R. 462, 471-72 (Chk. 2005).

A temporary restraining order is a drastic remedy. A court cannot, in good conscience, grant such relief when the plaintiff has failed to make a showing of irreparable harm and only one of the four factors – likelihood of success on the merits – weighs in its favor. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 164 (Pon. 2006).

Success on the merits appears likely since the plaintiffs may not be forced to undertake action

inconsistent with applicable state law either at their own instigation or under the guise of complying with an executive directive and since the PPA general counsel has a contract with PPA and certain rights flowing from that contractual relationship may not be impaired absent due process. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544-45 (Pon. 2008).

Even though when delinquent vessels are not permitted port entry means that the movant is deprived of the potential revenue that would result from the vessels' continued use of the port facilities, which results in reduced cash flow to him, and impairs his ability to pay the arrearages that he owes on behalf of the delinquent vessels, that financial hardship may result to the movant is immaterial because if financial hardship alone were the determining factor, then every financially strapped debtor could ask a court to enjoin an opposing party from engaging in actions which the opposing party has the right to undertake to pursue claims against the debtor. The factor of success on the merits thus weighs in the non-movant's favor. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 14 (Pon. 2008).

When the other three factors weigh strongly in favor of a preliminary injunction freezing the Tolensom CIP funds, the plaintiffs' likelihood of success on the merits does not need to be great in order for an injunction to issue because a court may grant a preliminary injunction even if the moving party is not more likely than not to prevail, as long as the movant's position appears sufficiently sound to raise serious, non-frivolous issues. Even if the parties moving for preliminary injunction relief do not appear more likely than not to succeed on the merits, which would be a factor weighing against granting such relief, it is only one of four factors and is not necessarily determinative when the other factors point toward such relief, and thus the court does not need to determine the plaintiffs' likelihood of success on the merits of the action. It only needs to determine that they have some likelihood of success since if they had absolutely no likelihood of success, no injunction could issue. Marsolo v. Esa, 17 FSM R. 377, 381-82 (Chk. 2011).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Without touching on the question of likelihood of success on the merits of the underlying case, a motion for injunctive relief in which the moving party asks the court to prevent a complained-of conduct or activity from occurring, but which is filed after the completion of the conduct or activity, cannot succeed when the conduct or activity is non-continuing. Berman v. FSM Nat'l Police, 18 FSM R. 103, 105 (Pon. 2011).

The bank has therefore shown that it is likely to succeed on the merits of its motion for an order to show cause why the defendant should not be held in contempt when, in continuing publicly to assert, against the evidence, that the bank had engaged in fraudulent conduct in obtaining not just the amended order of assignment, which is a final order, but also the stipulated judgment from which his grievances arise, which is a final judgment, the defendant intends not only to obstruct the administration of justice, but also to disobey or resist the court's lawful writ, process, order, rule or command. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants' likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

The likelihood that the plaintiffs will prevail on the issue of the Governor's executive orders is great since the Governor cannot "terminate" or "suspend" the PUC General Manager and since the Governor's directive to an "acting" General Manager and his actions in compliance with the Governor's orders will not stand legal scrutiny because the Governor has no authority to order a PUC general manager to do anything. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

Since the Governor cannot exercise the PUC Board's powers under any circumstance, the plaintiffs'

likelihood of success on the PUC bid evaluation process and the conclusion of an MOU with a bidder is great. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

When the Governor's letters to PUC Directors stated that they were suspended for fifteen days and proposed their removal from office and when one director brought his delinquent account up-to-date and the other had supplied evidence that he had not been delinquent for over three months their likelihood of success, while not as great as that of the other plaintiffs, is still substantial and not frivolous since one director's evidence tends to show that there was no good cause to remove him and the other was only removed after he had eliminated his delinquency and thus eliminated good cause to remove him before the date on which he was removed and so may have a viable estoppel theory for relief. Perman v. Ehsa, 18 FSM R. 432, 439 (Pon. 2012).

A plaintiff has a reasonable probability of success on the merits that insurance premiums will be ruled an income tax when the contributions are computed as a percentage of income earned as wages or salaries. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

A plaintiff has a good chance of success on the merits when its contract with the State provided for "the first right to negotiate," and "mandatory and binding arbitration," since these clauses would be meaningless if they were not enforceable after the contract's expiration date. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

The plaintiffs have a good likelihood of success on the merits when for the one plaintiff seeking specific performance money damages would be very difficult to calculate and when for the other plaintiff the process used to recommend another as the only qualified bidder was questionable and its bid to lease the site was clearly separate from its additional, optional proposal for a lease of a different site. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

When, even in the absence of a statute mandating the Election Commission's impartiality, the Commission must still be impartial, the plaintiffs have shown a likelihood of prevailing on the merits of their due process claim since the court is not persuaded by the defendants' contentions that since 2005, a "status quo" has been established in which the Commissioners have traveled to the polling places in order to conduct the election, and consequently, the this new "status quo" must remain undisturbed. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 587 (Chk. S. Ct. Tr. 2013).

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

Since certificates of title are prima facie evidence of ownership against all persons who did not have notice of the registration proceedings, any certificates of title for the land may mean that the likelihood-of-success factor would weigh in the plaintiffs' favor since in an action for trespass, a plaintiff with a certificate of title for the parcel usually has a greater possessory interest to the disputed property, but the likelihood-of-success factor may be strongly outweighed by the irreparable-harm and the balance-of-the-injuries factors. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

A plaintiff's likelihood of success on the merits, while not certain, is great when he has a deed to the tideland and his ownership was not questioned for at least twenty years after his purchase of it although his claim to ownership was open and notorious and when he could also possibly prevail under an adverse possession theory to the tidelands. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

When the petitioner has acknowledged she may not prevail on appeal and has failed to identify a single error of the FSM Court in entering the sale order, the petitioner has failed to show that she has likelihood of

success on the merits. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When the respondent is the FSM Secretary of Finance who is not in the position to address the interplay between the Chuuk executive and Chuuk legislative branches under the Chuuk Constitution, this impacts the legislature's likelihood of success on the merits in the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

As long as the movant's position appears sufficiently sound to raise serious, nonfrivolous issues, a court may grant injunctive relief even if the moving party is not more likely than not to prevail. The likelihood of success need not be certain or even more likely than not, only that the claims set forth in the complaint are non-negligible and have some chance of success on the merits. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The likelihood of success, although not certain, favors the plaintiffs when a recent study concluded that data shows that harvesting sea cucumbers is not recommended at present because of low densities of large species and no substantial recovery of small species since their populations declined in 2013, because the plaintiffs have provided sufficient proof that the State failed to develop a management plan or conduct appropriate assessments of the current harvest's sustainability; and because, as a result, there is a distinct possibility that these interests were not properly balanced. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

– Injunctions – Public Interest

Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. Damarlane v. Pohnpei Transp. Auth., 4 FSM R. 347, 349 (Pon. 1990).

The public interest weighs in favor of granting a preliminary injunction when the harm to the public that the defendant alleges remains fully protectable by consumers who may be confused, or by the Attorney General and when the public interest is best served by maintaining competition in the corned beef market pending the litigation's outcome. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 419 (Pon. 2001).

When the Legislative Counsels' continued services to the Legislature will not interfere with the executive's duties to faithfully execute the laws, and no fiscal issues are involved because their salaries are already appropriated, the balance of possible injuries favors issuance of the preliminary injunction, as does the strong public interest in the continued functioning of the Legislative branch with legal counsel, particularly during their session. Seventh Kosrae State Legislature v. Sigrah, 11 FSM R. 110, 114-15 (Kos. S. Ct. Tr. 2002).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

The potential for significant impact on the public interest exists when the cellular telephone system is already in use in Chuuk and is providing service to persons who previously had none and in places where telephone service was previously not possible and when the telephone services' expansion through the cellular system affects the Chuuk public's health, safety and welfare and economy in a positive manner. Having the system discontinued or severely restricted is not in the public interest. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 247 (Chk. 2003).

When, because of the special importance that land has in Kosraean society, the state has substantial interests in assuring that land issues are settled fairly, it is the public interest that the state deal fairly with issues involving land and to respect rights of owners of private land and comply with state laws in acquiring an interest in private land, and it is not in the public interest for the state to commit torts such as trespass, negligence, property or crop damage, or to engage in acts that will subject the state to liability; and when it is also in the public interest to assure that materials such as gravel are available for road maintenance and construction projects as this assists continued employment in the construction trade and provides benefits the people of Kosrae, the public interest weighs in favor of the state protecting rights of owners of private land, assuring compliance with state laws and avoiding liability through its actions and thus the public interest weighs in favor of granting relief for the plaintiffs. Sigrah v. Kosrae, 12 FSM R. 513, 520-21 (Kos. S. Ct. Tr. 2004).

Since the public interest supports the acceptance of prima facie evidence of property ownership through the certificate of title, to which the court must attach a presumption of correctness, and supports the validity and integrity of the Kosrae land registration process and registration of title documents and documents that transfer an interest in land, the public interest weighs in the titleholder's favor. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

When there is strong public interest in the protection of the land registration and ownership determination process and the court's upholding of a certificate of title's presumption of correctness, the finality of land ownership decisions, and the rights of fee owners of land to assert their ownership rights, including seeking ejection of trespassers from their land, this factor weighs in the plaintiff's favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 300 (Kos. S. Ct. Tr. 2005).

Since there is strong public interest in the protection of the land registration and ownership determination process, in the court's upholding of the finality of land ownership decisions, and in the rights of fee owners of land to assert their ownership rights, and since there is also strong public interest in the continuing protection of the grave sites for our ancestors, consistent with Kosraean custom and tradition, the public interest factor weighs in favor of injunctive relief. Norita v. Tilfas, 13 FSM R. 321, 324 (Kos. S. Ct. Tr. 2005).

The public interest factor weighs in the movants' favor since the impact on the public interest encourages an orderly judicial process in which all interested parties may be heard, their views properly considered, and their rights honored and when injunctive relief would advance that public interest and allow the matter to proceed in an orderly and deliberative fashion in the state court appellate division. Ruben v. Petewon, 13 FSM R. 383, 391 (Chk. 2005).

When the matter does not directly affect the public and any impact on the public interest, whether injunctive relief is granted or denied, would be negligible, the public-interest factor does not warrant extraordinary relief. GE Seaco Servs., Ltd. v. Federated Shipping Co., 14 FSM R. 159, 163-64 (Pon. 2006).

The impact-on-the-public-interest factor favors neither side when although one side is more eager to put the lot to immediate productive use in accordance with the purpose of commercial leaseholds in

Kolonia, the public has an interest in seeing that the Board of Trustees adheres to its public land lease regulations and its decisions. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

The public interest requires that laws be obeyed and the issuance of an executive directive, to the extent that it purports to interfere with the proper execution of applicable state law is against the public interest. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 545 (Pon. 2008).

When, even if the movant has met his legal obligations to the port authority in the past, that does not change the fact that he presently owes substantial sums to it and when the port authority is a public corporation organized to promote the public's interest in the effective administration of Pohnpei's port facilities, it is in the public interest that the port authority seek to enforce its regulations and to recover sums owed to it in an efficient and fiscally responsible manner, and the public interest factor will favor the non-movant port authority. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 15 (Pon. 2008).

When one strong public interest would favor the development of sound source of revenue for the state government to improve its financial condition and another public interest would favor keeping the ticket prices lower so as to encourage travel and tourism to Chuuk to benefit the local economy and increase local tax revenue that way, it is difficult to tell which side the public interest would favor. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010).

The public interest would strongly favor that Tolensom public funds be spent only for Tolensom public purposes as duly authorized by the appropriate authorities and that Tolensom public obligations not go unsatisfied because its public funds were spent improperly. Marsolo v. Esa, 17 FSM R. 377, 381 (Chk. 2011).

When a plaintiff argues that the District No. 11 constituents should not incur the expenses of a revote where there is a likelihood that the appellate court will set aside the results, the public interest is best served if due process is allowed to run its course. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

The public interest weighs in favor of issuing an injunction when it is limited in scope to protect the public from statements which are more likely to mislead than to inform the public. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

The public interest factor weighs in the bank's favor when there has not been any judicial determination that the bank has done anything improper and there have been judicial determinations against the defendant's claims of fraud against the bank as insufficiently pled, otherwise improper, unsubstantiated, or barred under res judicata and when the defendant's actions show an intent not only to obstruct the administration of justice but also to disobey or resist the court's lawful writ, process, order, rule, or command and continued pursuit of this course of action undermines public trust in the judicial system by undermining court orders and denying finality of judgment. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

A preliminary injunction will not be issued when, regardless of where the public interest lies, that factor cannot overcome the other three and cause the issuance of the preliminary injunction sought. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

The public interest factor favors the plaintiffs since the public interest should favor a fair and thorough, but not rushed, evaluation of the power generation bids which ends with the PUC Board of Directors approving a contract with the bidder with the best plan because it involves proposals for a long-term improvement of PUC's power generation capacity and the expenditure of a large sum. The public interest also favors adherence to the Pohnpei statutes that govern an independent public corporation such as PUC, rather than a blatant disregard of PUC's independent nature. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

Because the Chuuk Health Care Plan provides universal coverage, the public interest would favor its

continued and uninterrupted funding as currently budgeted. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

The public interest favors a bidding process that is fair and transparent. It also favors that foreign investors be seen to be treated fairly and thus encouraged to invest in Pohnpei to the State's benefit. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights to challenge a contract award under the public bidding statutes. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

Allowing the Election Commissioners to travel to conduct the elections will not serve the public interest since the commissioners' need to be physically present at the polling sites to conduct the election is a mischaracterization of the law because subordinate officers and employees are designated duties for the efficient performance of functions and duties and because the law requires impartiality, whether explicitly or implicitly, and the Commissioners' physical presence at the polling sites defeats impartiality and clouds the Election Commission with the appearance of impropriety. Consequently, an injunction will serve the public interest in a manner, which preserves the integrity of elections by ensuring that the Election Commissioners remain impartial while being available for any necessary quorums and require adequate planning for the elections. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589 (Chk. S. Ct. Tr. 2013).

While the public interest might favor the state's continuing road maintenance, that interest is not harmed by enjoining the state from dredging the plaintiff's tideland because of the availability of other coral sources. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

When, based on the petitioner's arguments in her motion, it is unclear how the public interest would be served by entering a temporary restraining order, the court cannot find, based on the petitioner's unsupported allegations (which are not evidence), that a temporary restraining order is warranted. In re Estate of Setik, 19 FSM R. 544, 548 (Chk. S. Ct. Tr. 2014).

The public interest favors the resolution of a dispute between the Chuuk state government's two political branches in the forum of the judicial branch of the Chuuk state government, not the FSM Supreme Court. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

The potential for a significant impact on the public interest exists when Pohnpei's entire population will be directly and adversely affected by an unsustainable sea cucumber harvest, potentially affecting Pohnpei's public health, welfare, and economy in a negative manner since allowing a potentially environmentally devastating sea cucumber harvest is certainly not in the public interest. There is strong public interest in protecting Pohnpei's precious environment and natural resources. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

When the plaintiff contends that the public interest is in its favor because an expanded storage operation would allow it to lower gas and fuel prices in Chuuk and also that the public has an interest in seeing the agreements made with public entities are upheld, and when the defendant does not contend that the public interest favors denying the injunction but merely contends that the plaintiff has not proven the four factors, the public interest favors the preliminary injunction's issuance. FSM Petroleum Corp. v. Etomara, 21 FSM R. 123, 128 (Chk. 2017).

– Interpleader

One purpose of the rule regarding interpleader is to protect stakeholders from being forced to determine the validity of competing claims against a fund. When a stakeholder has no interest in the fund, the purpose of the interpleader rule is to force competing claimants to contest a controversy between them without involving the stakeholder in litigation and subjecting the stakeholder to multiple liability. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

When the stakeholder can demonstrate that it is disinterested, it is appropriate for the court to dismiss the stakeholder from the action following the deposit of the funds at issue or the posting of a bond. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 263 (Pon. 1999).

The purpose of the interpleader rule is to force competing claimants to contest a dispute between them without involving the stakeholder in litigation and subjecting the stakeholder to potential multiple liability. Bank of the FSM v. Aisek, 13 FSM R. 162, 164 (Chk. 2005).

Interpleader is a two-step process. During the first stage, the court must make a determination whether the party invoking the remedy of interpleader has met its burden to establish its right to interplead the defendants. If it has, the court will order the sums deposited in the court's registry and, upon deposit, will then discharge the plaintiff. The action then proceeds to its second stage. This usually consists of enjoining the parties from prosecuting any other proceeding related to the same subject matter, and then proceeding to determine the remaining parties' respective rights to the money. Bank of the FSM v. Aisek, 13 FSM R. 162, 164-65 (Chk. 2005).

When all parties acknowledge in their pleadings that the plaintiff bank is subject to competing claims for the rental payments for the land because both of two different defendants claim to own the land on which the bank sits and thus to be the rightful recipient for any rental payments for the land's use, the plaintiff has established that it legitimately fears that it will be subject to competing claims for the same rental payments and is potentially subject to double or conflicting liabilities. It has thus established its right to the interpleader remedy. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

When it is undisputed that only one defendant paid for the improvements to the property, and it is also undisputed that only she pays for the property's maintenance and upkeep and for insurance on it; and when it is undisputed that the other defendant made no improvements to the land, the plaintiff's motion for interpleader remedy will be granted with the condition that only the portion of the rent attributable to the land, and not the portion attributable to her improvements, should be deposited in the court's registry. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

– Interrogatories

Any party may serve upon any other party written interrogatories to be answered by the party served. There is no requirement that two parties be directly adverse in order for one to seek discovery against another. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 287 (Pon. 1998).

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. Many legal conclusions require the application of law to fact and are appropriate under Rule 33. The only type of interrogatory that is objectionable, without more, as a legal conclusion, is one that extends to legal issues unrelated to the facts of the case. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 288 (Pon. 1998).

A question, taken literally, that calls for information on any kerosene related incident involving damage to property or injury to persons occurring anywhere in the world throughout the existence of three corporate defendants is, on its face, a request so broad that it clearly exceeds the scope of permissible discovery. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

It is incumbent upon a party propounding interrogatories not to pose questions calling for information outside the scope of permissible discovery. An attorney's responsibility in this regard is controlled by FSM Civil Rule 26(g). Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 478 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

Subject to limitations found elsewhere in the rules, Rule 33 defines the scope of information a party is required to provide when answering interrogatories as such information as is available to the party. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 324-25 (Pon. 2000).

Rule 33 provides an answering party with the alternative option of making records available if the burden of gathering the information would be substantially the same for either party. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 325 (Pon. 2000).

If a party satisfies its duty to make a reasonable search and diligent inquiry for discoverable information contained in an interrogatory and comes up empty, it is entirely satisfactory to respond by stating that the information is unknown. When this is done, however, the responding party should further indicate whether the information is believed to exist but has not yet been located or that the information cannot be provided because the responding party does not believe it to exist. If the latter response is provided, the responding party should further indicate whether the information was ever believed to exist and if so, where, when and in what form. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

It is also appropriate for a party answering "unknown" to an interrogatory to specify that discovery and investigation continues, and that the party will provide updated answers as soon as the information is located or in compliance with Rule 26(e)(2). Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

Whether a party is directed by a court order to answer an interrogatory or not, it is never acceptable not to provide a response unless a motion for protective order is timely filed under Rule 26. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 326 (Pon. 2000).

Any party may serve upon any other party written interrogatories to be answered by the party served. Depositions may be taken of any person but interrogatories are limited to parties. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

Each interrogatory is to be answered separately and fully in writing under oath, and when they are not answered under oath, they may be stricken and ordered filed and served in compliance with the rules. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

A party may be ordered to answer an interrogatory he failed to answer. Talley v. Talley, 10 FSM R. 570, 572 (Kos. S. Ct. Tr. 2002).

When none of the arguments put forward in opposition to a motion to compel discovery establish that there was any legitimate justification for the opposition to the plaintiffs' motion to compel or the failure to timely respond to the interrogatories, the defendant should pay the plaintiffs the reasonable expenses incurred in obtaining the order compelling interrogatory responses. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When the plaintiff makes the mere allegation that the work product doctrine applies, this is insufficient to claim the privilege. When the defendant is seeking facts about the state of the decedent's health when he applied for the insurance policy, and the privilege does not protect facts, the plaintiff will answer the interrogatories. Sigrah v. Microlife Plus, 13 FSM R. 375, 378 (Kos. 2005).

When the court says discovery shall be completed by a certain date, it means both propounded and answered. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Six days is added to the 30 day time period to respond when service of the interrogatories and production requests occurs by mail. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 569 (Pon. 2007).

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. The answers must be signed by the person making them, and the objections must be signed by the attorney or trial counselor making them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

When a corporation is answering interrogatories, the person answering for it must be either an officer or an agent of the corporation. The corporation's agent answering interrogatories and signing the answers may be the corporation's attorney. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

While counsel was a proper person to sign the answers to interrogatories on the corporate defendant's behalf, she could not sign the answers on behalf of either of the parties who are natural persons. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331-32 (Pon. 2011).

In order for the interrogatory answers to be the answers of natural persons, those persons must sign the answers to interrogatories and they must sign them under oath. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

A court may, in its discretion, order that unverified interrogatory answers be refiled under oath or that an affidavit be filed to verify previous answers. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

An interrogatory about an event after the suit was filed is irrelevant unless it would lead to admissible evidence about earlier events. Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

When a defendant partially answered an interrogatory by noting that the Transco policy of requiring court probate orders to determine the heirs of deceased shareholders had been used numerous times but objected to providing the names, dates of probate proceedings in which courts, and the number of shares involved as overly broad and intrusive, the court does not think it overly broad or intrusive for a list to be provided of the names of the deceased shareholders for whom probate orders have been provided Transco since 2004, but anything more would be unnecessary. Mori v. Hasiguchi, 17 FSM R. 630, 642 (Chk. 2011).

A party must respond to interrogatories directed to her. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Interrogatories addressed to an individual party must be answered by that party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Although it must look first to FSM sources of law rather than start by reviewing other courts' cases, the court may look to U.S. sources for guidance when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, such as Civil Procedure Rule 33 on interrogatories since the court has seldom needed to construe it because litigants' use of that discovery tool has generally not been problematic. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 n.1 (Pon. 2016).

A responding party must answer interrogatories in writing and sign the answers under oath. The answers to interrogatories must be responsive, full, complete, and unevasive. The answering party cannot limit his or her answers to matters within his or her own knowledge and ignore information immediately available to him or her or under his or her control. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438-39 (Pon. 2016).

If an appropriate interrogatory is propounded, the answering party will be required to give the information available to him or her, if any, through his or her attorney, investigators employed by him or her or on his or her behalf or other agents or representatives, whether personally known to the answering party or not. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

If the answering party lacks necessary information to make a full, fair and specific answer to an interrogatory, it should state under oath and should set forth in detail the efforts made to obtain the information. Allegations made in pleadings do not meet this standard. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

An interrogatory response asserting that detailed explanations were already provided in the complaint's factual statements, is an inadequate and unacceptable response to an interrogatory. Incorporation of a pleading's allegations by reference is not a responsive and sufficient answer to an interrogatory. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

Interrogatory answers must be responsive, full, complete and unevasive. Insofar as practical they should be complete within themselves. Material outside the answers and their addendum ordinarily should not be incorporated by reference. If information from other answers is incorporated in a particular answer to avoid repetition, references should be specific rather than general. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

Interrogatories should be answered directly and without evasion in accordance with information that the answering party possesses after due inquiry. As a general rule, a party in answering interrogatories must furnish information that is available to it and that can be given without undue labor and expense, and if a party is unable to give a complete answer to an interrogatory, it should furnish any relevant information that is available. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440 (Pon. 2016).

If some of the interrogatories are objected to, the reasons for objection must be stated, an answer provided to the unobjectionable parts, and the objections signed by the attorney raising them. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 440-41 (Pon. 2016).

If the answer to an interrogatory involves the use of extensive business records, then it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification must be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

A clearly relevant interrogatory should be answered with the information requested. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

A response to the bank's interrogatory that sought information about a specific named person (who apparently had endorsed at least one of the bank's refund checks), that that was a document that the party had received from the bank so the party did not know anything about it, is completely non-responsive to the question, which asked who the named person was and where he could be found, and was evasive and inadequate and thus a sanctionable response. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon.

2016).

– Intervention

Rules 19(a) and 24(a) of the FSM Rules of Civil Procedure refer to similar "interests." Decisions under Rule 19(a) provide additional understanding of the meaning of "interest" in Rule 24(a). Wainit v. Truk (I), 2 FSM R. 81, 84 (Truk 1985).

The interest of the speaker of a state legislature in upholding validity of laws enacted by that legislature, and in obtaining funds for the legislature pursuant to the tax legislation challenged in litigation, is not the kind of interest which will support a right to intervene in the litigation pursuant to FSM Civil Rule 24(a) in order to enforce the legislation through cross-claims and counterclaims. Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Under FSM Civil Rule 24(b), the interest needed for permissive intervention is not as great as that needed under FSM Civil Rule 24(a). Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Where the speaker of a legislature seeks to intervene in order to deny the plaintiff's claim that legislation enacted by the legislature is invalid, his proposed denial, with the complaint, presents a single or common question of law within the meaning of FSM Civil Rule 24(b), and the intervention may be permitted so long it will not cause undue delay, or prejudice adjudication of the rights of the original parties. Wainit v. Truk (I), 2 FSM R. 81, 85 (Truk 1985).

Where one seeking to intervene under FSM Civil Rule 24(b) would not raise new and difficult issues through a proposed answer but would do so through proposed cross-claims and counterclaims, the court may properly limit the participation of the intervenor to defense against the plaintiff's claims. Wainit v. Truk (I), 2 FSM R. 81, 86 (Truk 1985).

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. California Pac. Assocs. v. Alexander, 7 FSM R. 198, 200 (Pon. 1995).

The purposes of intervention are to protect the interests of those who may be affected by the judgment and to avoid delay, circuitry of action, and similar, repetitive lawsuits. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

The procedure for intervention is usually specified by statute or by court rules. In the Kosrae State Court, a motion to intervene must be served upon the parties and the grounds for the motion stated. When no such motion has been made, the procedural requirements for intervention are not satisfied, and intervention should not be permitted. Langu v. Kosrae, 8 FSM R. 455, 458 (Kos. S. Ct. Tr. 1998).

Both intervention of right and permissive intervention must be upon timely application. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

Timeliness must be determined from all the circumstances of the case. There are four factors to consider when determining whether a motion to intervene is timely: 1) how long the applicant knew or should have known of his interest before making the motion; 2) the prejudice to existing parties resulting from any delay; 3) the prejudice to the applicant if the motion is denied; and 4) any unusual circumstances

militating for or against a finding of timeliness. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

An application to intervene is untimely when the would-be intervenors knew or should have known of their interest against the potential defendant, the prejudice to the potential defendant was that it could be liable for a large sum for a claim for which it would not otherwise be liable because the statute of limitations had run, the prejudice to the would-be intervenors was that they would receive no more compensation than the $105,311.27 they had already received in a settlement, and the unusual circumstances militating against a finding of timeliness was that the would-be intervenors were the original plaintiffs in the lawsuit and had filed their case and had notice of the potential defendant well before the statute of limitations had run. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

An intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Both intervention of right and permissive intervention must be upon timely application. An application when the litigation is still in its initial stages and no prejudice to the existing parties is apparent is timely. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

When the state claims an ownership interest in some or all of the marine space claimed by the two plaintiffs that filed the initial complaint and neither the existing plaintiffs, nor any defendant, can adequately represent the state's claimed interest, which would impair or impede the state's ability to protect its interest, and when the application is timely, the state is entitled to in intervene as a plaintiff in the case. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Generally, when a party is permitted to intervene in a pending case he joins the litigation as it stands and subject to the proceedings that have already occurred. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Timeliness is not the sole prerequisite for intervention of right. There must be an existing litigation into which to intervene, because intervention may not be utilized to revive a moribund lawsuit. Intervention contemplates an existing lawsuit and cannot be permitted to breathe life into a non-existent suit. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Because stipulations of dismissal are effective when filed, once they are filed there is no action left in which to intervene and later motions to intervene are moot. Moses v. Oyang Corp., 10 FSM R. 273, 275-76 (Chk. 2001).

Even if the motion to intervene had been filed before the parties' stipulated dismissal was filed, the parties' stipulated dismissal would be effective without the movant's consent in the absence of a court-ordered stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

The mere filing of a motion to intervene will not give a person party status because persons seeking to intervene in a case cannot be considered parties until their motion to intervene has been granted. Motions to intervene are not granted automatically, nor does their filing constitute an automatic stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Would-be intervenors, whose motions to intervene have not yet been granted, are not parties who have appeared in the action, and because stipulated dismissals are effective when filed, their motions to intervene will then be denied as moot. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Although there are those rare cases where it may be proper to allow intervention even after judgment has been entered, a case that was voluntarily dismissed before any judgment was entered is not such a case because the parties stipulated to a dismissal, not to a judgment and no judgment was, or will be,

entered. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

Both intervention of right and permissive intervention must be upon timely application. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364 (Chk. 2003).

A motion to intervene must be accompanied by a pleading setting forth the claim. The motion can be denied solely on procedural grounds for failure to comply with the rule and supply a proposed pleading. Such a denial would be without prejudice. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364 (Chk. 2003).

An intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): a substantial interest, impairment of that interest, and inadequacy of representation by existing parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 364-65 (Chk. 2003).

When a bank's chattel mortgage purchase money liens are not enforceable against third parties who have had no notice of them and are therefore not enforceable against and do not have priority over an execution lien, even if the bank were permitted to intervene, it could not prevail. Since that is so, the bank does not have an interest in the litigation that would be impaired if it were not allowed to intervene and therefore does not satisfy the elements required to intervene of right. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365-66 (Chk. 2003).

Permissive intervention may be granted when the applicant's claim or defense and the main action have a question of law or fact in common and if the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Permissive intervention will be denied when the intervenor's claim has no questions of law or fact in common with the main action and its sole claim is that it disputes whether the judgment can be enforced against certain of the defendants' assets and when the court has already determined that the claim must fail. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

There are rare cases when it may be proper to allow intervention even after judgment has been entered. Courts are reluctant to allow intervention after entry of judgment and require a strong showing by the applicant. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

The rule is that intervention may be allowed after a final judgment or decree if it is necessary to preserve some right which cannot otherwise be protected, but such intervention will not be permitted unless a strong showing is made. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Both intervention of right and permissive intervention must be upon timely application, but a permissive intervention motion under Rule 24(b) filed after all rights to appeal have expired is never timely. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

In addition to timeliness, an intervenor must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Generally, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

An attempt to intervene after final judgment is ordinarily looked upon with a jaundiced eye. The rationale underlying this general principle is the assumption that allowing intervention after judgment will either prejudice the rights of the existing parties to the litigation or substantially interfere with the court's

orderly processes. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

Intervention after judgment has been entered carries with it inherent procedural disruption, and a high risk of prejudice to the original parties by undercutting litigation strategies planned without reference to the intervenor. It is well in such cases to deny intervention to an applicant who does not act promptly to protect his interest in the case, once he learns of it. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 (Chk. 2003).

When a would-be intervenor has no interest in the litigation's subject matter, but only claims an interest in the funds that were generated to pay the judgment, he has other remedies to recover the funds already paid. To allow him to intervene would substantially interfere with the court's orderly process by inserting new causes of action in to post-judgment consolidated cases, which include parties with no interest in any of his claims, and who would be prejudiced by having their collection efforts unnecessarily involved with a landowning dispute. This would create procedural disruption. The would-be intervenor's remedy is to assert whatever causes of action and claims, he deems appropriate, against such defendant(s), as he is advised, in a new action. His application to intervene must therefore be denied. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

It seems proper to permit an applicant's intervention for the limited purpose of protecting whatever interest he and his lineage may have in the undistributed funds on deposit with the court. As long as the funds remain on deposit, the present parties are not prejudiced. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

An applicant's motion to intervene will be denied with the exception of his and his lineage's claim to funds on deposit with the court. Intervention will be permitted for the limiting purpose of protecting his and his lineage's claim to those funds if he files and serves a pleading asserting only his claim to the funds deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 519 (Chk. 2003).

A motion to intervene must state the grounds therefor and be accompanied by a pleading setting forth the claim or defense for which intervention is sought. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

A denial of a motion to intervene can be solely on the ground that no proposed pleading accompanies the intervention motion, but such a denial would be without prejudice. The motion could be refiled with a proposed pleading attached. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

Although the formal requirements of Rule 24(c) state that a proposed pleading should accompany the attempt to intervene, when the papers filed give adequate notice to the parties of the claim and clearly state the ground for it, they have fulfilled the substance of Rule 24's requirements. Noncompliance with Rule 24(c)'s strict requirements does not bar consideration of the motion's merits. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

There are rare cases where it is proper to allow intervention even after judgment has been entered. Courts are reluctant to allow intervention after judgment and require a strong showing by the applicant. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

Intervention may be allowed after a final judgment or decree when it is necessary to preserve some right which cannot otherwise be protected. In re Engichy, 11 FSM R. 555, 557 (Chk. 2003).

While the court has previously allowed intervention for the sole purpose of asserting a claim to funds on deposit with the court, when the court is not currently in possession of any funds and does not expect to be and when the entity from which the funds are claimed is no longer a party to the case, a motion to intervene to claim such funds will be denied. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

If a party is permitted to intervene in a pending case it joins the litigation as it stands and subject to the proceedings that have already occurred. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

When the court is not in possession of any funds to which a would-be intervenor might assert its claim and the would-be intervenor has no interest in the subject matter of the case, its remedy, if it wishes to resort to judicial proceedings, is to file a separate action against either whoever it believes may be liable to it on its claim. In re Engichy, 11 FSM R. 555, 558 (Chk. 2003).

Although there is authority that it was the moving party's burden to insure compliance with the Rule 24(c) requirement that the attorney general be notified of challenges to a statute's constitutionality, the language of the rule provides that the court "shall notify" the attorney general, and the better course would have been for the court to insure that the FSM attorney general's office had received notice. However, the failure to notify the attorney general does not deprive the court of jurisdiction. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

When writs of garnishment that formally designated the FSM as a "garnishee/defendant" were entered before the notices of appeal, the FSM was already a party and its motion to intervene is therefore moot. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

The court cannot grant a motion to intervene after a notice of appeal has been filed, since it would have no jurisdiction to permit intervention once a notice of appeal has been filed. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 n.2 (Chk. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM R. 3, 8-9 (Chk. 2003).

A motion to intervene must be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Absent such a pleading, the motion is improper, and must be denied. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

Not only must proper procedures be followed in seeking intervention, any motion to intervene must also be timely. Timeliness must be decided on the facts presented, and depends on four factors: 1) how long the applicant knew or should have known of his interest before making the motion; 2) the prejudice to other parties should the motion be granted; 3) prejudice to the applicant if the motion is denied; and 4) any other factors militating for or against timeliness. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

Intervention may be denied when the existing parties will suffer prejudice if intervention is permitted since the court's decision has disposed of all issues raised by all current parties to the litigation and having new issues presented six years after the first case was filed, would not serve the ends of justice and would interfere with the parties' rights to a final resolution of their dispute and when the would-be intervenors will not prejudiced at all since they may pursue their claims before the Land Commission. Hartman v. Chuuk, 12 FSM R. 388, 402 (Chk. S. Ct. Tr. 2004).

While it is entirely likely that non-parties could succeed on the merits of an action seeking an injunction without ever being parties in another case with a judgment because failure to join an indispensable party may subject a judgment to collateral attack, there are those rare cases where intervention is timely under Rule 24 even though it is after entry of judgment. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A motion to intervene must be accompanied by a pleading setting forth the claim or defense for which intervention is sought. A motion to intervene that does not include such a pleading or is not amended to include such pleading before the court has ruled on it must be denied. Ruben v. Hartman, 15 FSM R. 100, 114-15 (Chk. S. Ct. App. 2007).

Like other motions in a pending action, a motion to intervene must be served according to the requirements of Rule 5. Additionally, Chuuk State Supreme Court GCO No. 01-06 requires that a certificate of service be filed with the motion. If and when the court grants a motion to intervene, then

service of process of the intervener's complaint is performed according to the requirements of Rule 4. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

A motion to intervene must state the grounds for intervention and be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

Rule 10(a) requires the designation of the parties in a caption. As a matter of good practice, mischaracterizations of the parties to an action should be avoided. The proposed interveners' caption to their motion, should not mischaracterize themselves as parties when they have not yet been permitted to intervene. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

A proposed pleading must set forth claims in numbered paragraphs the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, as required by Civil Rule 10(b); otherwise the pleading's averments will be "vague" and "ambiguous" and not sufficiently "simple, concise, and direct" to reasonably require a responsive pleading. Although no technical form of pleadings is required, the complaint must have a caption. Kubo v. Ezra, 16 FSM R. 88, 90-91 (Chk. S. Ct. Tr. 2008).

When, in the form submitted, the would-be interveners' proposed complaint is too vague and ambiguous for defendants to reasonably frame a responsive pleading, the court will treat the combined motion and pleading as a motion to intervene only and conclude that the motion to intervene is deficient because it was not filed with an attached proposed pleading. Kubo v. Ezra, 16 FSM R. 88, 91 (Chk. S. Ct. Tr. 2008).

Since both intervention as of right and permissive intervention must be upon timely application and a permissive intervention motion under Rule 24(b) filed after judgment has been entered and all rights to appeal have expired can never be timely, post-judgment movants must qualify as intervenors as of right in order to be permitted to intervene. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 607 & n.1 (Chk. 2011).

In addition to timeliness, intervenors must make a three part showing to qualify for intervention as a matter of right under Rule 24(a): an interest, an impairment of that interest, and the inadequacy of representation by existing parties, but, absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Would-be intervenors do not qualify to intervene in a case where they cannot show an interest in the litigation about a defaulted bank loan and where they cannot show either an interest in this litigation's post-judgment remedy of mortgage foreclosure on land or an impairment of that interest since they cannot show that they have any interest in the mortgaged land when that land is not registered to them and other persons have a certificate of title to it. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

In order to qualify for intervention as a matter of right, a movant must make a three-part showing, *to wit*: an interest, impairment of same, and inadequate representation of that interest by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 217 (Pon. 2015).

An intervention, whether as of right or permissive, hinges upon whether the court can properly recognize the would-be intervenor's alleged interest in the subject cause of action. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

In order to intervene under Rule 24, an applicant must have an interest which is of such a direct and immediate character, that the proposed intervenor will either gain or lose by the immediate operative effect of that judgment, but when the would-be intervenor has no direct pecuniary interest in the litigation's outcome, it lacks the requisite standing to intervene as an interested party. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

Both intervention of right and permissive intervention must be upon timely application. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

When the would-be intervenor contemplates joining a third-party defendant, prejudicing the existing parties and their ongoing settlement efforts; when a current party has a vested interest in the performance of the subject contract and consequently the movant's interests are presently being represented in an adequate manner; when the movant's depiction of its interest and the impairment thereof is nebulous at best and fails to demonstrate that a current party's representation is inadequate; and when there was a five-month lapse before intervention was sought, the motion to intervene will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

– Joinder, Misjoinder, and Severance

An FSM Civil Procedure Rule 21 motion for misjoinder should not be granted when the claims against the joined parties arose out of the same occurrence and there are common questions of law and fact. Manahane v. FSM, 1 FSM R. 161, 164 (Pon. 1982).

When more than two years had elapsed in pending litigation before filing of a motion for leave to file third party complaint under FSM Civil Rule 14(a), when a pre-trial order closing discovery had been filed and the existing parties had declared themselves ready for trial, when filing of the complaint would introduce new issues, when no reason for delay in filing the motion has been given, and when the opposing party reasonably objects on grounds that the delay will prejudice that party's rights, the motion to file a third party complaint should be denied. Salik v. U Corp. (II), 3 FSM R. 408, 410 (Pon. 1988).

A motion for joinder under FSM Civil Rule 19 will be denied where it appears that complete relief between the existing parties could be granted without the joinder and where there is no showing that the party sought to be joined claims an interest relating to the subject of the action. Salik v. U Corp. (II), 3 FSM R. 408, 410 (Pon. 1988).

A motion to add counterclaims and join new defendants will be denied where the new defendants and counterclaims are virtually identical to those in a separate pending action before the court and the moving party has failed to show that the relief sought by the opposing party is the same as that sought in an earlier decided case between the same parties. Nahnken of Nett v. United States (II), 6 FSM R. 417, 421-22 (Pon. 1994).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

The burden of joining absent parties rests with the party asserting their indispensability. Nahnken of Nett v. United States (III), 6 FSM R. 508, 518 (Pon. 1994).

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly

complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

Where resolution of issues in a third-party complaint is unnecessary to the resolution of the primary claim and will result in a delay in the resolution of the primary claim, and the answer to the third-party complaint has added more complex issues, unrelated to the primary action, a motion to sever may be granted. International Trading Corp. v. Ikosia, 7 FSM R. 17, 19 (Pon. 1995).

The real party in interest in a civil action is the party who possesses the substantive right to be enforced. The mere fact that a shareholder may substantially benefit from a monetary recovery by a corporation does not make the shareholder a real party in interest entitled to seek monetary recovery in a civil action. A claim of such a shareholder will be dismissed. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96-97 (Pon. 1995).

Although joinder may be permitted at any stage of the proceedings on such terms as are just, a person will not be joined as a plaintiff after trial when the plaintiffs were aware of that person's circumstance for four years of the litigation, that person had been a party defendant for a time, and there was no showing that that person's ability to protect his interest was impaired or impeded. Damarlane v. United States, 7 FSM R. 350, 353 (Pon. 1995).

No one is rendered an indispensable party who must be joined merely because if he is not his claim is time-barred. Damarlane v. United States, 7 FSM R. 350, 355 (Pon. 1995).

Compulsory joinder will be denied when the moving party has failed to explain exactly why it is that complete relief cannot be accorded among those already parties without the joinder, why the non-parties' interests would be impaired without joinder, or why failure to join would expose those who are already parties to inconsistent obligations. Lavides v. Weilbacher, 7 FSM R. 400, 403-04 (Pon. 1996).

Rule 21 motions to sever are often more properly brought as motions for separate trials under Rule 42(b). Severance of claims under Rule 21 converts them into independent actions, and is limited to cases in which the claims are separable enough to make appropriate a separate final judgment with its usual consequences. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 527-28 (Pon. 1996).

Separate trials should not be ordered unless such a disposition is clearly necessary. Thus it will not serve judicial convenience or economy to order separate trials when both plaintiffs must prove the same liability and where trial together would yield an equitable result. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 528 (Pon. 1996).

Joinder is the act of uniting as parties to an action all persons who have the same rights or against whom rights are claimed as either co-plaintiffs or co-defendants. Lavides v. Weilbacher, 7 FSM R. 591, 594 n.2 (Pon. 1996).

An exceedingly high threshold must be met for joinder to be proper after judgment has been rendered, especially when there was ample opportunity to argue in favor of joinder before trial and when the parties who are now seeking joinder have repeatedly changed their position on the matter throughout the proceedings. Damarlane v. United States, 8 FSM R. 45, 56 (App. 1997).

When complete relief has already been accorded among the parties to the litigation, it is proper to deny joinder to another because he is not an indispensable party. Damarlane v. United States, 8 FSM R. 45, 56-57 (App. 1997).

While Rule 70 provides that the court may "appoint" a third party to undertake specified actions on the behalf of defendants, when a non-party has indicated its desire to participate in the litigation in more than the administerial way contemplated by Rule 70, the better course may be to add the non-party formally as a party defendant pursuant to Rule 21, which provides for the addition of parties "at any stage of the action and on such terms as are just." Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

A branch campus of the College of Micronesia-FSM does not have the capacity to sue or be sued on its own and will be dismissed from an action where the College of Micronesia-FSM, a public corporation, is a party. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Someone who has bought at least part of disputed land is a person who must be joined as a party in the land dispute because complete relief cannot be accorded among those already parties in the person's absence or because the person sought to be joined claims an interest relating to the subject of the action and that person's absence may impair or impede the person's ability to protect that interest or leave any of the parties subject to a substantial risk of inconsistent obligations. Palik v. Henry, 9 FSM R. 267, 270 (Kos. S. Ct. Tr. 1999).

A counterclaim may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 n.1 (Yap 1999).

Civil Procedure Rule 13(h) provides that persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19 and 20. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

A defendant is not required to obtain leave of court before naming additional defendants on its counterclaim, when the counterclaim is brought in the original answer, but although not required by Rule 13(h), the general practice is to obtain a court order to join an additional party. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

When a defendant counterclaims against the original plaintiff and new additional parties, as to claims between the original parties the original plaintiff is designated plaintiff/counterdefendant while the original defendant is designated defendant/counterplaintiff, and as to new parties on the counterclaim, the original defendant is designated counterclaim plaintiff, while the new parties are designated counterclaim defendants. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

In the case of misjoinder, parties may be dropped or added by order of the court of its own initiative at any stage of the action. A party joined by the court in the mistaken belief that he was making a claim to land parcels involved in an action before the court will be dropped as a party when it is apparent his claim is to parcels distinct from those in the court action. Palik v. Henry, 9 FSM R. 309, 311 (Kos. S. Ct. Tr. 2000).

A motion to dismiss for failure to join necessary parties may be denied without prejudice when it is at too early a stage of the proceedings to determine whether complete relief among the parties cannot be obtained without the joinder of others. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Parties may be added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. A court usually has the discretion to refuse to join a new party at a late stage of the litigation. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Although refusal to add a party defendant to an action is a matter of discretion for the trial court and absent a showing of abuse of discretion will not be disturbed, Rule 19(a) does require a court to join as a party someone who in his absence complete relief cannot be accorded among those already parties or someone who claims an interest in the subject of the action and whose absence may impair his ability to protect that interest or would leave those already parties subject to substantial risk of multiple or inconsistent obligations. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

If a clan claimed to own the tideland in dispute and had moved to intervene in the action, the trial court should then have joined the clan as a party. But when they did not move to intervene, and it appears that the clan may not even claim to own the tideland, the appellate court is not inclined to remand the case for a new trial with the clan, or its members, unwillingly joined as a party. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203-04 (Chk. 2002).

In Chuuk, it has been common practice for one joint owner to sue as a representative of himself and other joint owners, or for the lineage as a whole to sue as one party, but when neither is what was done in the case and the plaintiff's complaint asserted that he was the sole owner of the land allegedly trespassed upon, a defendant's motion to add the land's co-owners as parties-plaintiff must be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

Rule 14 allows a defendant to bring in third parties by causing a summons and complaint to be served upon persons not a party to the action who are or may be liable to the defendant for all or part of the plaintiff's claim against the defendant, but if those persons are added as parties plaintiff in the action, then they are parties, not third parties, and no third party complaint could possibly be brought against them. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

If persons the defendant seeks to add as third parties become plaintiffs, then the "claims" the defendant seeks to bring against them can properly be raised as defenses to the plaintiffs' action, and a motion for leave to file a third party complaint against them must be denied. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

A defendant is also allowed, at the court's discretion, to add as a permissive counterclaim any claim it has against the plaintiff that is unrelated to the plaintiff's claims. While the court may not be inclined to grant leave to add a counterclaim, not in the original answer, if adding it would cause further delay in the proceeding, but when it appears that the counterclaim is straight forward and will not delay matters and when it does not appear that much preparation for this claim will be needed so as to delay the scheduled trial, the motion to add a permissive counterclaim will be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204-05 (Chk. 2002).

If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed. The factors the court must consider include: 1) to what extent a judgment rendered in the person's absence

might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 404-05 (Chk. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment in a rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (Chk. 2003).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 (Chk. S. Ct. Tr. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM R. 274, 278-79 (App. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting an appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

A debtor is not an indispensable party under Rule 19 in an action to enforce a guaranty of payment. A lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a suit is being brought by three of the representative committee members within the clan and is not a suit being brought by the clan as a whole and thus did not require authorization by the clan; when the interest of the plaintiffs who represent part of the clan may be adverse to the interests of the other clan committee members, who may not be proper plaintiffs based on the causes of actions alleged in the suit;

and when complete relief can be accorded among those already parties without the joinder of the other committee members, a motion to join those other committee members as indispensable parties will be denied. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When title to land is at issue, all known persons who are claiming title must be joined in order to settle ownership without additional litigation. The policy supporting this rule is that all persons needed for a full, fair, and just adjudication should be part of the case and have an opportunity to be heard. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

When the appellants are interested parties and therefore will receive notice and opportunity to be heard in the proceedings in Land Court during the remand of a related case involving the same parties and land, the Kosrae State Court will decline to place the parties at risk of inconsistent obligations and to require them to participate in multiple litigation over title to the same parcel and will therefore will not address the appellants' claims in but order them to participate in the remanded case at Land Court, if this has not already occurred. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Rule 19(a) provides two circumstances under which a person can be joined as a party to an action: 1) if in the person's absence complete relief cannot be accorded among those already parties and 2) if the person claims an interest relating to the subject of the action. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

When the court is not convinced that complete relief under the original judgment cannot be afforded the defendant without joining non-parties as parties plaintiff; when filing a new civil action based upon the judgment is an available option and more properly suited to this situation involving a third person who was not, under any theory advanced, connected with the action during its first decade of litigation; when it is unclear whether the non-parties are claiming an interest in the land that is subject to the action and the action is not the proper forum for making such a determination; there is no need to join the non-parties as parties plaintiff in a post-judgment matter and the court will continue the action by the original plaintiff as explicitly provided for by Rule 25(c). Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A motion to join non-parties is procedurally defective when there is no certification that it has been served upon the plaintiff, as required, and when there is no certification that the defendant sought the plaintiff's acquiescence, as required, to joining the non-parties as plaintiffs before so moving the court. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632

(Pon. 2008).

Both the requirement that the claim arise from the same transaction or occurrence and the requirement that there be a question of law or fact common to all defendants must be satisfied in order to sustain party joinder of defendants under Rule 20(a). Herman v. Municipality of Patta, 16 FSM R. 167, 171 (Chk. 2008).

Rule 18 permits the joinder in a single action of as many claims, legal, equitable, or maritime, as the party has against an opposing party even if those claims are unrelated. But when the claims that the plaintiffs seek to add are not against any opposing party, but are against persons the plaintiffs seek to add as new defendants eight years after the complaint they seek to amend was filed and five years after judgment was entered on that complaint, the joinder will not granted. Herman v. Municipality of Patta, 16 FSM R. 167, 171-72 (Chk. 2008).

Any candidate who would be adversely affected by the relief an aggrieved candidate seeks would be an indispensable party to the action and must be joined before a court could grant any relief or a dismissal will ensue. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

When each party seeks relief solely against the other, and there is no allegation that the United States is liable for either party's alleged breach of contract, or liable to the defendant for the plaintiff's alleged violations of due process, or other claims and when, even assuming the United States has some interest in the subject of the action because it is the funding source, but there is no suggestion by either party that the United States cannot protect its own interests and there is no claim that either of the parties has a substantial risk of incurring double, multiple or inconsistent obligations, the plaintiff is not entitled to have the counterclaims dismissed on the ground that the United States is an indispensable party. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482-83 (Pon. 2009).

The four factors in Rule 19(b) the court must consider before finding the case cannot proceed without an indispensable party are: 1) the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.1 (Pon. 2009).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

The Legislature is not an indispensable party when a petition seeks a writ commanding the State Election Commission to perform an act, not the Legislature to perform an act. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

A plaintiff may join in one action all the claims it has against the party being sued. Stephen v. Chuuk, 18 FSM R. 22, 25 n.3 (Chk. 2011).

A motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot accord complete relief between the parties already present in the action without the joinder of others. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense

that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

If it is filed no more than 10 days after the original answer is filed, a defending party may, without the leave of the court, cause a summons and third-party complaint be served on a person not party to the case who may be liable to the third party plaintiff for all or part of the plaintiff's claim. If the third-party complaint is not filed within ten days after the defendant's original answer is served, then the defendant must ask the trial court for leave to implead, and the decision whether to implead a third-party defendant is addressed to the trial court's sound discretion. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

In determining whether a case ought to be dismissed because necessary and indispensable parties are not joined, the court must consider: 1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or to those already parties; 2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. If an indispensable party cannot be made a party, the court must determine whether in equity and good conscience the action should proceed among the parties before it or whether it must be dismissed, but a motion to dismiss for failure to join indispensable parties will be denied when the court has not been shown that it cannot afford complete relief between the parties already present in the action without the joinder of others. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289-90 (Yap 2012).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal will not be prejudiced if the complaint against it included a vicarious liability claim against the principal for an agent's acts even if the plaintiffs do not also sue the agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Joint tortfeasors are not indispensable parties. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 290 (Yap 2012).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of

what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

An issue is not part of the trial mandated by the appellate court and that may not be appropriate for trial since there may not be disputed material facts, might be resolved by a summary adjudication \without the need of a trial so, rather than delay the mandated trial further, the court will separate the issue from the civil rights damages trial. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 379 (Pon. 2014).

Although only Congress has the power to determine the percentage of the states' revenue share and only Congress has the power to appropriate public funds or to authorize withdrawals from general and special funds, Congress is not an indispensable party to a suit by a state seeking only the constitutionally mandated 50% of revenue because the state is not asking for a percentage higher the constitutionally mandated 50%. Chuuk v. FSM, 20 FSM R. 373, 376-77 (Chk. 2016).

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

– Judgment on the Pleadings

Normally a Rule 12(c) motion for judgment on the pleadings is granted or denied upon the entire complaint, and the rule does not provide for partial judgment as in Rule 56(d) summary judgment, but where the briefing was exhaustive, full argument made, and such a judgment promotes an expeditious disposition of matters placed before the court, partial judgment may be granted. Damarlane v. United States, 6 FSM R. 357, 359 (Pon. 1994).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. A motion for judgment on the pleadings shall be granted only when the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96 (Pon. 1995).

Motions to dismiss for failure to state a claim upon which relief can be granted filed after an answer has been filed are considered motions for judgment on the pleadings. In ruling on a motion for judgment on the pleadings a court must presume the non-moving party's factual allegations to be true and view the inferences drawn therefrom in the light most favorable to the non-moving party. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is normally granted or denied upon the entire complaint, but where a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party which have been denied are taken as false. Judgment is granted only if the moving party is clearly entitled to judgment on the facts as so admitted. In re Kuang Hsing 182, 7 FSM R. 465, 467 (Yap 1996).

Judgment on the pleadings cannot be granted when nonmovant's factual allegations are taken as true or on movant's affirmative defenses because affirmative defenses are deemed denied by operation of Civil Rule 8(d). In re Kuang Hsing 182, 7 FSM R. 465, 468 (Yap 1996).

Partial judgment on a motion for judgment on the pleadings may be granted when the full argument allows the court to understand the parties' position and such a judgment promotes an expeditious disposition of matters before the court. Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff's claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

A motion to dismiss will be denied when the parties' later stipulation to entry of partial judgment made moot any contention that the defendants' subsequent payments entitled them to a dismissal of the bank's claim to foreclose and sell the vessels, and when the pleadings and the mortgage terms on their face entitle the bank to such a remedy if its factual allegations are taken as true, as they must be on a motion to dismiss or for judgment on the pleadings. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 331 (Pon. 2001).

A motion for judgment on the pleadings will be granted only if the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Marcus v. Truk Trading Corp., 10 FSM R. 346, 347-48 (Chk. 2001).

Judgment on the pleadings cannot be granted for the defendant on the grounds of a valid lease agreement, or for laches, or for the statute of limitations, when the plaintiff's pleading alleges facts, which if true and they must be taken as true for the propose of the motion, would bring the signed lease's validity into question, would justifiably account for the delay in bringing the suit, and which would make it an action for a continuing trespass, for which the contract statute of limitations would not apply. Marcus v. Truk Trading Corp., 10 FSM R. 346, 348 (Chk. 2001).

A motion to dismiss for failure to state a claim may be brought after an answer has been filed by a motion for judgment on the pleadings or at the trial on the merits. But when the movant presents matter outside the pleadings as part of his motion to dismiss, then under Rule 12(c), the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars the plaintiff's claim, or that the sole defense relied upon by the defendant is insufficient as a matter of law. But when the court will not dismiss two of the plaintiff's causes of action, judgment on the pleadings is not proper. Jano v. Fujita, 15 FSM R. 405, 409 (Pon. 2007).

When both parties submitted, in support of their respective positions, a substantial number of exhibits culled from the administrative record and the plaintiff's last response included other exhibits, a motion for judgment on the pleadings will be treated as one for summary judgment and disposed of as provided in Rule 56. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

Kosrae Rules of Civil Procedure Rule 12(c) governs a motion for a judgment on the pleadings and if, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the opposing party's pleadings are taken as true and all allegations of the moving party that have been denied are taken as false, and judgment is granted only if the movant is clearly entitled to judgment on the facts as so admitted. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

When, taking the non-movant's well-pleaded material allegations as true, a dispute exists over the title to the leased land, the court cannot grant judgment on the pleadings or dismiss the complaint on the ground that it fails to state a claim. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

When matters outside the pleadings are presented, a motion for judgment on the pleadings is actually

a summary judgment motion. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

A plaintiff's "renewed" motion for judgment on the pleadings will be denied without prejudice when the third-party defendants were not served although their rights would be affected; when the renewed motion, incorporated by reference deep in another document, may have slipped by the other parties without notice since none responded; and when the situation has changed since the motion was originally made. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

If matters outside the pleadings are presented along with a motion for judgment on the pleadings, that motion becomes a summary judgment motion. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When it is clear that material questions of law and fact remain, a motion for judgment on the pleadings must be denied. Harden v. Inek, 18 FSM R. 551, 553 (Pon. 2013).

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Such a motion must be granted if the moving party demonstrates that no material fact is in dispute and that it is entitled to judgment as a matter of law but, when matters outside the pleadings are presented in the motion for judgment on the pleadings, the court must treat the motion as one for summary judgment under Rule 56. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a summary judgment motion. A motion for judgment on the pleadings must be granted only when the movant has demonstrated that there are no issues of material fact, and that the movant is entitled to judgment as a matter of law. The moving party must carry its burden by reference solely to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651 (Chk. S. Ct. Tr. 2013).

When the parties rely on declarations beyond the pleadings themselves, the court will treat the plaintiffs' motion for judgment on the pleadings as a summary judgment motion. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

Normally, a Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is granted or denied on the entire complaint, but when a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

When matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a summary judgment motion. A motion for judgment on the pleadings will be granted only when the movant has demonstrated that there are no issues of material fact and that the movant is entitled to judgment as a matter of law. The movant must carry its burden solely by reference to the pleadings, and the court must evaluate all facts and inferences in the light most favorable to the non-moving party. Panuelo v. FSM, 20 FSM R. 62, 66 (Pon. 2015).

A motion for judgment on the pleadings can only be made after the pleadings are closed, and the pleadings are not closed when the defendant has not pled by filing an answer. Fuji Enterprises v. Jacob, 20 FSM R. 121, 124 (Pon. 2015).

– Motions

Under the Rules of Civil Procedure a party opposing a motion has ten days to file a response. Six days may be added if service was by mail. The time period does not commence running from date of notice for hearing on the motion, but from the date of the motion itself. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Motions may be served on other parties prior to being filed. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

A movant's inaction is insufficient to notify the court (or other parties) that a motion has been dropped. Only a notice of withdrawal of motion will do that. Otherwise a motion may be decided without hearing and without further request. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

A motion filed in a related criminal case for the release of a vessel, which is only a defendant in a civil forfeiture action, will be denied as not properly before the court. FSM v. Wu Ya Si, 6 FSM R. 573, 574 (Pon. 1994).

A court may grant a motion nunc pro tunc to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. A motion nunc pro tunc cannot be used to supply an action omitted by the court. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM R. 592, 593-94 (Pon. 1994).

A party opposing a motion has ten days after service of the motion to file and serve responsive papers. Six days are added to this period when the service was done by mail. The court may at its discretion enlarge the time for filing for cause shown. Where no reason is given for late filing and an enlargement of time is not sought, responsive papers will be stricken from the record as untimely. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 84 (Chk. 1995).

The FSM Civil Procedure Rules do not provide for the filing of replies to oppositions to motions, but they do not prohibit them either. It has been the general practice of the trial division to accept such filings although in a particular case the court may direct otherwise. Damarlane v. FSM, 7 FSM R. 383, 385 (Pon. 1996).

An opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

A motion, although obviously filed as a result of an opponent's objection to an earlier motion for enlargement, but which requests affirmative relief different from the motion for enlargement, may stand as an independent motion, and may be seen as the withdrawal of the earlier motion to enlarge. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

While the FSM Rules of Civil Procedure do not provide for replies to responses to motions, they do not prohibit them either, and it has been the general practice of FSM Supreme Court's trial division to consider them in the absence of an order directing differently. A court may consider replies to the extent that they address the response, and not to the extent that the reply may raise issues extraneous to the original motion or the response. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after

notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A motion to stay most closely analogizes to a motion to abstain, and such a motion is not a pre-answer motion, but a pre-trial motion. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

Although the Civil Procedure Rules do not specifically provide for the filing of replies to oppositions to motions, the Rules do not prohibit the practice, and the usual practice has been to accept them. AHPW, Inc. v. FSM, 9 FSM R. 301, 303 (Pon. 2000).

The FSM Civil Procedure Rules 5, 6 and 7 set forth the requirements governing service, filing and the form of motions. In accordance with Rule 5, all motions filed with the court must also be served on each party to the action. Similarly, each paper filed must be accompanied by certification of service of copies upon all other parties. O'Sullivan v. Panuelo, 9 FSM R. 589, 592 (Pon. 2000).

A motion is deficient in multiple respects when it does not appear that it was served on any party to the action including the very party it was directed toward, when it was not accompanied by certification of service upon all other parties, when it was supported by an affidavit which was filed one day after the motion was filed and the affidavit was not accompanied by certification of service upon all other parties as required by Rule 5(d), nor was it served with the motion as required by Rule 6(d), and when the motion did not contain a certification that a reasonable effort had been made to obtain the agreement or acquiescence of the opposing party and that no such agreement had been forthcoming. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

When, although a copy has been faxed to the court, a motion has never been filed and when no application for filing by facsimile pursuant to Civil Procedure Rule 5(e) has been made, the motion is not before the court. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 606 (Chk. 2000).

Motions to strike under Rule 12(f) are viewed with disfavor and are infrequently granted. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Pleadings are defined as the complaint, answer, reply to a counterclaim, answer to a cross-claim, third-party complaint, and third-party answer. No other pleadings are allowed, except that the court may order a reply to an answer or a third-party complaint. No other paper will be considered a pleading and a motion in any form cannot stand as a pleading. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

The court may consider and will not strike a response by a party other than the one against whom a motion is directed since any party may oppose another party's motion. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

It is not the court's practice generally to hear oral argument on pre-trial motions. Livaie v. Kosrae Sea Ventures, Inc., 10 FSM R. 206, 208 (Kos. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs' quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473-74 (Pon. 2001).

Counsel, who also signed another party's motion even though it did not involve a live dispute with

respect to his client, should be prepared to address why at least nominal sanctions should not be imposed against him in the event that a Rule 11 violation occurred. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

A pending motion to dismiss that involves only matters of law can be decided without hearing. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

The court may decide motions based on the written filings. Stephen v. Chuuk, 11 FSM R. 36, 39 (Chk. S. Ct. Tr. 2002).

Under Kosrae Civil Procedure Rule 12, a motion to dismiss is directed to a pleading, not a motion. Rule 6(d) uses the term "responsive papers" to designate how a motion is responded to. A reply, though not provided for under Rule 6(d), has been employed by those wishing to address new matter raised in a response. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59-60 (Kos. S. Ct. Tr. 2002).

A written motion, other than one which may be served ex parte and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing, unless a different period is fixed by these rules or by court order. Such an order may for cause shown be made on ex parte application. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Civil Rule 6(d) addresses when a written motion must be filed. It does not address notice or service, which is addressed by Rule 5. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Every written motion and similar paper must be served upon each of the parties. No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When the plaintiff has failed to establish that the relief requested in its motion may be had on an ex parte basis, the court will order the plaintiff to serve its motion on the defendant. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

A motion to relieve a person of the effect of a court order will be denied as moot when a later order directed another to undertake the task. Davis v. Kutta, 11 FSM R. 545, 548 (Chk. 2003).

A new claim that constitutionally only the state election commission can conduct municipal elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12

FSM R. 492, 495-96 (Chk. 2004).

Since there is no authority that a litigant may "reserve" an unspecified objection by stating that it is reserving its right to comment and object to an attorney's fees submission until such time that the appellate division has finally determined the appealed case including the propriety of the award of attorney's fees and costs, such a notice of reservation is deemed a waiver of any objection to counsel's amended attorney's fee statement. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

The FSM Civil Procedure Rules neither specifically provide for the filing of replies to oppositions to motions nor bar them, and it has been the trial division's general practice to accept such filings. A court may thus consider replies to the extent that they address the opposition, and not to the extent that the reply raises issues extraneous to the original motion or the opposition. A response to a reply can only be termed a surreply. Surreplies are uncommon, but the court will consider them on the same terms and for the same reasons that it considers replies. Sipos v. Crabtree, 13 FSM R. 355, 360-61 (Pon. 2005).

Any request or application made to the court for relief is considered a motion. Kiniol v. Kansou, 13 FSM R. 456, 459 n.2 (Chk. 2005).

Kosrae Rule 11 requires that every pleading of a party represented by an attorney or trial counselor must be signed by at least one attorney or trial counselor of record in his individual name and a party who is not represented by an attorney or trial counselor must sign his pleading. Thus, when a defendant, and not his trial counselor, signed a motion for dismissal himself, the signing of the motion did not comply with Rule 11. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

A filing that asks the court to do something is considered a motion because a request to the court asking for an order is a motion regardless of what the party has chosen to call it. Lee v. Han, 13 FSM R. 571, 575 & n.1 (Chk. 2005).

When a "supplement" to a motion to disqualify a law firm from representing one defendant, seeks to disqualify the law firm from representing any defendant in the case, it is properly considered a separate motion. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

Generally, fourteen days notice must be given before hearing a motion, but that time may be shortened by court order. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250 (App. 2006).

A filing, although styled a response, was actually a motion when it asked the court for an order to strike since any application to the court for an order is a motion. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

An opposition to declaratory judgment motion will not be stricken because it is based on Rule 56 (summary judgment) whereas the motion is grounded in Rule 57 (declaratory judgments) when the arguments incorporated into the opposition are relevant. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

When the third-party defendants' motion to dismiss was signed by the plaintiff's counsel, the motion to dismiss is an unsigned paper under Rule 11 which provides that an unsigned pleading, motion, or other paper will be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. Accordingly, the third-party motion to dismiss shall be stricken unless it is signed and the signature indicates that counsel is signing as attorney for the third-party defendants. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 572 (Pon. 2007).

A court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Thus, failures to rule on motions were an abuse of the trial justice's discretion and led to further reversible error in the trial justice's rulings. Ruben v. Hartman, 15 FSM R. 100, 109 (Chk. S. Ct. App. 2007).

A motion to join non-parties is procedurally defective when there is no certification that it has been served upon the plaintiff, as required, and when there is no certification that the defendant sought the plaintiff's acquiescence, as required, to joining the non-parties as plaintiffs before so moving the court. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A letter that does not certify that it has been served upon the plaintiff as required and that does not certify that the defendant sought the plaintiff's acquiescence, as required, is procedurally deficient because the court will treat the letter as a motion for amended judgment and/or supplemental findings. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Regardless of what a party chooses to call the papers they have filed, those papers are what they are based upon their function or the relief they seek. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.4 (Pon. 2008).

Although a right to reply to an opposition is not explicitly afforded by the FSM Rules of Civil Procedure, a motion to permit a reply will be granted when the movant certifies that opposing counsel has agreed to it. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

Although the FSM Rules of Civil Procedures neither specifically provide for nor bar replies to oppositions, the general practice has been to accept them and consider them to the extent that they address the opposition, and not to the extent that they raise issues extraneous to the original motion or the opposition. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

Without a de minimis showing of the law upon which the opposition relies, an opposition must be considered not to have been filed, and without an opposition, the reply to the opposition must likewise be considered not to have been filed. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

The elements of a complete motion are: 1) a memorandum of points and authorities; 2) appropriate evidentiary support, such as affidavits or exhibits, for factual contentions; and 3) a certification of agreement or acquiescence. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223, 228 (Kos. 2010).

Practitioners should endeavor to provide well-formatted motions. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When a movant fails to plead the necessary elements of civil contempt and when the movant fails to provide evidentiary support for factual contentions and because of the motion's nature, a motion to show cause why a defendant should not be held in contempt is insufficient. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions. Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 & n.2 (Pon. 2010).

When a moving party requests certain judgments and argues that it is entitled to them as a matter of law, the motion is one for summary judgment, regardless of the motion's title. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 435 (App. 2011).

The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

A Rule 41(b) motion after the plaintiff has completed the presentation of plaintiff's evidence can be

written or oral because motions, unless made during a hearing or trial, must be made in writing. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

The inability to serve a show cause motion on a defendant means that a court cannot grant that motion without depriving the accused of due process rights. A wiser course of action, with respect to show cause motions, would be to serve the motion first, and then to file the motion and certificate of service within a reasonable time after service, an option expressly provided by the rules of civil procedure. In light of this alternative, and because circumstances may have changed since November 12, 2008, denial of the November 12, 2008 show cause motion is appropriate. Dateline Exports, Inc. v. George, 18 FSM R. 147, 149 (Kos. 2012).

Although the absence of opposition is generally deemed consent, a court still needs good grounds before it can grant an unopposed motion. FSM Dev. Bank v. Paul, 18 FSM R. 149, 150 (Pon. 2012).

Since a party may amend its pleading once as a matter of course at any time before a responsive pleading is served if the pleading is one to which a responsive pleading is permitted, the plaintiffs were entitled to amend their complaint once as a matter of course when the defendant filed a motion to dismiss the original complaint since a motion is not a pleading. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A motion to enforce a trial court's previous interlocutory order must be denied when it was not included in the final judgment or explicitly made a separate final judgment under Civil Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

By rule, the court deems failure to oppose a motion as consent to the motion, but even then the court still needs good grounds before it can grant an unopposed motion. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 410-11 (Chk. 2012).

Since a plaintiff cannot file a notice of dismissal in a case under Rule 41(a)(1)(i) when the adverse party has already served an answer, the court must therefore consider the petitioner's notice of dismissal filed after the respondent has served an answer to be a motion to dismiss. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When good cause, rooted in the principles of judicial economy, exists, the court may grant a motion to defer decision. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

Regardless of what a movant calls a motion, the court will look to the actual relief sought and decide the motion on the basis of what it actually is, not what it is labeled. Mori v. Hasiguchi, 19 FSM R. 222, 225-26 (Chk. 2013).

When a typhoon disrupted power and shut down all offices, courts, and utilities between October 17 and October 18, 2013, precluding the plaintiffs from properly serving the defendants, it is clear that the plaintiffs were justified in filing their motion *ex parte*, and have demonstrated excusable neglect, as the

delay was caused by a *force majeure* event. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

– Motions – For Enlargement

A filed stipulation to extend time to respond to a motion will be treated as a motion for an enlargement of time, but will be denied when filed after the time respond has expired and no excusable neglect has been shown. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

Requests for postponements are properly made by a motion for an enlargement of time. Such a motion may be made even after the time specified for action has passed when the failure to act was due to excusable neglect. FSM Telecomm. Corp. v. Worswick, 7 FSM R. 420, 422 (Yap 1996).

A showing of excusable neglect is required to grant a request for enlargement of time made after the time allowed had elapsed. Counsel's failure to make a note to remind him of the answer's due date and his attention to other matters, both personal and professional, does not establish excusable neglect. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

A defendant's motion to enlarge time to file an answer may be granted, even though excusable neglect has not been shown, when it would be conducive to a speedy and inexpensive determination of the action, the delay has not been long, and no prejudice to the plaintiff is apparent. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

An enlargement of time to oppose a motion may be granted when the mail service has been delayed and erratic. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

A motion, although obviously filed as a result of an opponent's objection to an earlier motion for enlargement, but which requests affirmative relief different from the motion for enlargement, may stand as an independent motion, and may be seen as the withdrawal of the earlier motion to enlarge. Island Dev. Co. v. Yap, 9 FSM R. 279, 282 (Yap 1999).

When motions to enlarge time are made before the expiration of the period prescribed by a court order to do some thing, they may be granted just for cause shown. Medabalmi v. Island Imports Co., 10 FSM R. 217, 218 (Chk. 2001).

When a motion to enlarge time is filed after the time set by an order has expired, the court must determine whether the movants' failure to timely act was the result of excusable neglect. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

The determination of what sorts of neglect that can be considered "excusable" is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include the danger of prejudice to the nonmovant, the length of delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

To establish excusable neglect a movant must show good faith and a reasonable basis for noncompliance. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

The burden is on the movant to establish that the failure to act timely was the result of excusable neglect. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 (Chk. 2001).

When the delay was within the movants' counsel's reasonable control, when the movants' inability to propound discovery because they failed to timely request it, will not affect their rights at trial – *e.g.*, they may

still cross-examine the plaintiffs' witnesses, object to proffered evidence, and subpoena witnesses and documents, and when, taking account of all relevant circumstances surrounding the movants' omission, they have failed to show the excusable neglect that would justify enlarging their time to make discovery requests, an untimely motion to enlarge time for them to propound discovery requests will be denied. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219-20 (Chk. 2001).

Rule 6(b) requires that when requesting an enlargement to perform an act when the period has expired, the moving party must show excusable neglect. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

The Rule 6(d) requirement that motions "contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming" does not apply to Rule 6(b)(1) requests to enlarge time (requests made before time has expired) since such requests may be made, and granted, without notice. Such certification is necessary for Rule 6(b)(2) requests to enlarge time once the deadline has passed since such requests must be made on motion with notice. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 474 (Chk. 2004).

When a party files a motion for enlargement of time under Rule 6(b) after the time for doing the act has expired, he must show excusable neglect. Merely being a busy lawyer does not establish excusable neglect and a motion to enlarge brought on that basis will be denied. Clarence v. FSM Social Sec. Admin., 13 FSM R. 34, 35 (Kos. 2004).

Rule 6(b) requires that, absent a showing of excusable neglect, a motion for enlargement of time must be filed within the period set forth by subpart (d). FSM Dev. Bank v. Neth, 17 FSM R. 131, 133 (Pon. 2010).

Primarily salient to a court's analysis of an assertion of excusable neglect are: 1) an explanation of the movant's diligent and good faith efforts and 2) the lack of prejudice to the opposing party, but good-cause efforts and lack of prejudice are not enough to justify a finding of excusable neglect. Excusable neglect does not exist when there are possible methods by which the situation may have been avoided. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

The standard for reviewing excusable neglect is stricter than the standard of good cause. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

When the defendants were served a motion after their attorney left the island on April 6, 2010, and the deadline for filing an opposition lapsed before her return, there was no practical way to oppose the motion, even though the defendants had notified the court and all attorneys of their attorney's departure before she departed the island. Had the analysis stopped here, the defendants' motion to enlarge time to oppose would have merited a finding of excusable neglect. But when, upon their attorney's return the defendants did not immediately file a request for enlargement but waited an additional ten days to file a request for an enlargement to May 7, 2010, and when that date passed and the defendants had yet to file an opposition memorandum, the court is unable to find the defendants' neglect was excusable. FSM Dev. Bank v. Neth, 17 FSM R. 131, 134 (Pon. 2010).

Motions for enlargement of time to file briefs are timely because they are filed before the briefs are due when they are filed on the same day the briefs were due. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

An early enlargement motion can be useful in showing good faith, and a motion two or three days beforehand may be most helpful if it can provide an accurate estimate of the time needed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

"Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule

or order, to show why a request should be granted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

While merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time (although when other factors are also present, the neglect may be excusable), the "good cause" standard is a broader and more liberal standard than "excusable neglect." Since the "good cause" standard frees courts from some of the restraints imposed by the excusable neglect requirement, there thus would be times when being a busy lawyer would satisfy the good cause standard where it obviously could not satisfy the higher excusable neglect standard. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

A motion for enlargement is within the court's discretion and such a grant is not mandatory and will be denied when the court has noted the history of delays in the matter because of counsel's consultation via e-mail with her client who lives in California, but since he is confined by his doctors and not allowed to travel, counsel should have little problem locating him via an international phone call. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 13 (Kos. S. Ct. Tr. 2011).

When there were at least three power outages and additional unscheduled outages during the first week of February which imposed difficulties on the defendants in producing the required documents and because the power outages were out of the defendants' control and the defendants had no reason or way to know of the unscheduled power outages, the defendants' failure to file their opposition by February 10, 2012, was due to excusable neglect and the court will grant an enlargement since a court may enlarge time to perform an act after the expiration of the period if the failure to do the act within the period was the result of excusable neglect. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Rule 4(j) sets a time frame of 120 days from when a complaint is filed for process to be served on the defendant. This time limit, like other time limits in the FSM Civil Procedure Rules, may be enlarged by the court for "cause shown" if request therefor was made before the expiration of the period originally prescribed or, on motion made after the expiration of the specified period if the failure to act was the result of "excusable neglect." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465-66 (Yap 2012).

The Rule 6(b)(1) "cause shown" standard is a lower standard than the "good cause shown" standard. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 n.4 (Yap 2012).

For the court to grant an enlargement under Rule 6(b)(1) for cause shown, a party must demonstrate some justification for the issuance of the enlargement order. However, an application for the enlargement of time under Rule 6(b)(1) will normally be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

Although the court must first look to FSM sources of law rather than begin with a review of foreign sources when the FSM court has not previously construed the standard to determine "cause shown" under Rule 6(b)(1), an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 n.5 (Yap 2012).

A party who files a motion to enlarge time and files that motion out of time, must demonstrate excusable neglect for the delay. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 256 (Pon. 2014).

The court has the discretionary authority to grant enlargements. When timely filed, such requests may be granted just for cause shown. Under the cause shown standard, the moving party must simply

demonstrate some justification. These motions will normally be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556-57 (Pon. 2014).

A timely-filed motion for an enlargement will be granted when additional time to complete discovery is needed before a summary judgment decision can be made; when the motion is made in good faith, and not only will the opposing party not be prejudiced by delay but that the interest of justice makes such a delay necessary. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 557 (Pon. 2014).

A motion to enlarge time to answer probably should have been granted since it was timely and had shown cause. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

– Motions – For Reconsideration

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgement, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Since a party cannot seek relief from a judgment that does not exist, a motion for relief from a partial summary judgment is therefore properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

An order granting partial summary judgment may be characterized as final only upon an express determination that there is no just cause for delay and upon an express direction for the entry of judgment.

When no such determination or direction appears in an order, a plaintiff's motion for relief from judgment is one to reconsider an interlocutory order, and cannot rest on Rule 60(b). Smith v. Nimea, 17 FSM R. 125, 128-29 (Pon. 2010).

When the court has acted on and previously denied a similarly mischaracterized motion to reconsider, the court must properly consider that the plaintiff's "supplement," which sets out a novel argument, is a second motion to reconsider. Smith v. Nimea, 17 FSM R. 125, 129 (Pon. 2010).

When the plaintiff has made five motions to reconsider, all of which this court has denied and when, including the original order, the court has ruled six times that his claims for unpaid wages, overtime and wrongful termination were not properly before the court, he is well within his rights, if he continues to feel that the court has committed error, to appeal this decision, but the trial court will not entertain further motions to reconsider the dismissal of the wrongful termination, unpaid wages and overtime claims. Smith v. Nimea, 17 FSM R. 333, 338 (Pon. 2011).

A plaintiff's "renewed" motion for judgment on the pleadings will be denied without prejudice when the third-party defendants were not served although their rights would be affected; when the renewed motion, incorporated by reference deep in another document, may have slipped by the other parties without notice since none responded; and when the situation has changed since the motion was originally made. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

When the movant has provided no new evidence or case law to persuade the court to amend its earlier order that all of the facts and issues he raises were heard, decided, appealed, and affirmed over 14 years ago and are precluded from being re-raised under the doctrine of res judicata his motion for the court to reconsider its order will be denied. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

When there is no final judgment in a case but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

A summary judgment motion and a motion to reconsider were, since no final judgment had yet been entered and regardless of how the plaintiffs or the court styled them, Rule 54(b) motions to reconsider and to grant the plaintiffs further relief if the reconsideration was favorable. Although the trial court erred in calling the summary judgment motion "moot," the trial court was within its rights to deny that motion when it had already decided the issues the motion raised and those decisions were the law of the case and were unfavorable to the plaintiffs. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

Motions for reconsideration must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423, 424 (Pon. 2014).

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

Mere disagreement with the court's application of the standard for imposing Rule 11 sanctions does not support a motion to reconsider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

When the court's earlier denial of a request for a further $4 million default judgment was not a final judgment, the court may readily reconsider that denial. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

A motion to reconsider is not expressly identified within the FSM Rules of Civil Procedure. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

A motion for reconsideration may not be used to marshal arguments for the first time that could have been raised before. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

A motion to reconsider should state, with particularity, the points of law or fact the moving party contends the court overlooked or misapprehended *vis a vis* an attempt to reargue a question that has previously been considered and ruled upon. A motion for reconsideration must also be narrowly construed and strictly applied, in order to discourage litigants from making repetitive arguments on the same issue that the court has already thoroughly considered. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

– Motions – Points and Authorities

Failure to file a memorandum in opposition to a motion is deemed a consent to the motion. Actouka v. Etpison, 1 FSM R. 275, 276 (Pon. 1983).

Failure to file a memorandum of points and authorities with a motion constitutes a waiver of the motion. Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

The failure of the nonmoving party's memorandum to set forth points and authorities constitutes a consent to the granting of the motion. FSM Civ. R. 6(d). Enlet v. Truk, 3 FSM R. 459, 461 (Truk 1988).

A memorandum of points and authorities filed by a party opposing a motion must set forth the law upon which the party relies and his theory as to the application of that law to the facts of the case. Enlet v. Truk, 3 FSM R. 459, 462 (Truk 1988).

A memorandum of points and authorities filed in opposition to a motion should set forth the law upon which the party relies and his theory as to how that law should be applied to the facts of the case. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

A written motion shall be served with a memorandum of points and authorities, and the moving party's failure to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

The moving party has the same standard as the responding party with respect to the content of the

memorandum of points and authorities – it must set forth the applicable law and apply that law to the facts of the case. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

No bright-line test is appropriate for determining what is a sufficient memorandum of points and authorities under Civil Procedure Rule 6(d) and a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

A motion to strike a memorandum supporting a motion and a response to an opposition is not a motion to strike matter from pleadings subject to Rule 12(f), but rather, falls under the general motion practice of Rule 7(b) which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

Because the Rules must be construed to secure the just, speedy, and inexpensive determination of every action the court may deny striking a memorandum filed 18 days after the motion it supported when the memorandum provides the court with additional relevant information. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

When a request for attorney's fees contained no points and authorities to support its request and was not argued at the hearing, the request is deemed waived and abandoned. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

When the movant has failed to provide any authority to support its motion, it will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

As a general principle, failure to file a memorandum of points and authorities with a motion constitutes a waiver of the motion, and, similarly, the failure of the nonmoving party's memorandum to set forth points and authorities constitutes a consent to the granting of the motion. Although there is no bright-line test appropriate for determining what a sufficient memorandum of points and authorities is, a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Still, a memorandum of points and authorities filed in opposition to a motion should set forth the law upon which the party relies and his theory as to how that law would be applied to the facts of the case. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

Of the three elements of a complete motion, the FSM Civil Procedure Rules explicitly mandate only the memorandum of points and authorities and the certification of agreement or acquiescence, and the court is most insistent on a memorandum of points and authorities, such that failure to file one in a motion constitutes a waiver of the motion and failure to file one in an opposition to a motion constitutes a consent to the granting of the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Given that a written motion's basic requirement is that it state with particularity the grounds therefor, the motion's memorandum of points and authorities is of prime importance. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Since there is no bright-line test appropriate for determining what a sufficient memorandum of points and authorities is, a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223, 228 (Kos. 2010).

Since the Rules must be construed to secure the just, speedy, and inexpensive determination of every action, the court may deny striking a memorandum filed 18 days after the motion it supported when the memorandum provides the court with additional relevant information. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Motions to file by facsimile do not require detailed evidentiary support, only a showing of "special cause." FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Although affidavits are a common form of evidentiary support for factual contentions, no FSM case law

requires that evidentiary support take that form in particular and Rule 6, which addresses general issues of timing in motion practice, uses the word "when" in describing situations where a motion is supported or opposed by affidavit. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Any affidavit in support of a motion or responsive paper must be served with the motion or responsive paper. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 n.9 (Kos. 2010).

The diligent practitioner is responsible for providing sufficient facts, points of law, and analyses, as appropriate to the motion's nature. Clarity and attention to detail will facilitate the administration of justice. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When the court accepts that the motion to dismiss may be properly considered a motion for summary judgment under FSM Civil Rule 56, it will not conjecture why the movant referenced FSM Civil Rule 12(b)(6) although the memorandum of points and authorities that accompanied the motion discussed the legal standard for summary judgment. Berman v. Pohnpei, 18 FSM R. 67, 71-72 (Pon. 2011).

Although Rule 6(d) requires that motions contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in the motion's mandatory denial. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

– Motions – Rule 6(d) Certification

All motions must contain the movant's certification that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming. Motions without such certification may be denied without prejudice on that basis alone. Calvary Baptist Church v. Pohnpei Bd. of Land Trustees, 9 FSM R. 238, 239 (Pon. 1999).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and decreases the cost of litigation by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. Calvary Baptist Church v. Pohnpei Bd. of Land Trustees, 9 FSM R. 238, 239 (Pon. 1999).

The requirement that reasonable efforts be made by a moving party to obtain the opposing party's agreement before filing a motion is a particularly important one. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and decreases litigation costs by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. O'Sullivan v. Panuelo, 9 FSM R. 589, 595-96 (Pon. 2000).

A plaintiff's summary judgment motion that fails to comply with the certification requirements of Civil Procedure Rule 6(d) may, for this reason alone, be denied without prejudice and may be renewed subject to plaintiff making reasonable attempts to reach agreements on its disposition with the defendants affected by any order requested. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

Motions failing to comply with requirements of Rule 6(d) should be denied without prejudice. O'Sullivan v. Panuelo, 9 FSM R. 589, 599 (Pon. 2000).

In determining what must be done to satisfy the Rule 6(d) requirement that a reasonable effort has been made to obtain the opposing party's agreement, it is appropriate to consider the circumstances of a

given case, and a reasonable effort to obtain agreement may include an explanation clarifying the issue involved and explaining the likely outcome of the motion from both a procedural and substantive perspective. O'Sullivan v. Panuelo, 9 FSM R. 589, 600 (Pon. 2000).

When the parties are not in disagreement on every issue addressed by a motion, compliance with FSM Civil Rule 6(d) would have served its intended purpose of generating a compromise without court intervention. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603 (Pon. 2000).

Compliance with the rule requiring motions to contain a movant's certification that a reasonable effort has been made to obtain the opposing party's agreement initiates a dialogue between the parties and decreases litigation costs by minimizing paperwork and eliminating unnecessary court appearances when compromises are reached, and in turn reduces the court's workload thereby increasing its ability to attend to other matters and minimize delays. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603-04 (Pon. 2000).

The Rule 6(d) requirement that motions "contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming" does not apply to Rule 6(b)(1) requests to enlarge time (requests made before time has expired) since such requests may be made, and granted, without notice. Such certification is necessary for Rule 6(b)(2) requests to enlarge time once the deadline has passed since such requests must be made on motion with notice. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 474 (Chk. 2004).

Rule 6(d) requires that motions be accompanied by a memorandum of points and authorities and that the moving party's failure to file the memorandum of points and authorities shall be deemed the moving party's waiver of the motion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

Although Rule 6(d) requires that motions must contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in a mandatory denial of the motion. Whether the court denies a motion because it lacks a certification concerning the opposing party's "agreement or acquiescence," is a matter left to the court's discretion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

When there are other grounds to deny a motion, the absence of a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" will be used as a secondary ground of denial. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

When the motion is sought *ex parte* or is one that may be sought *ex parte* or without notice, no certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" is needed. Otherwise, when the certification is absent, the court will generally not rule either way on the motion until the time (generally ten days, or if served by mail, sixteen) allowed for responses has expired, unless the opposing party has filed a response before then. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

A movant who fails to include a certification concerning the opposing party's agreement or acquiescence, takes the risk that, because of the certification's absence, the motion may be denied and that, as a result of the passage of time, the possibility of taking alternative action or of renewing the motion may be gone or its possible scope or effectiveness may be narrowed. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

Often, seeking the opposing party's consent is simply good practice because, although agreement by counsel does not mean that the court will, or must, grant the agreed motion, it does increase the likelihood it will be granted. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 (Chk. 2004).

In the case of certain motions, such as a Rule 11 motions for sanctions, the court, in its discretion, has, and will, overlook the lack of a certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 496 & n.3 (Chk. 2004).

Civil Rule 6(d) provides that all motions shall contain certification by the movant that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming, but a motion for an order in aid of judgment, which is what the court must consider a motion for a writ of garnishment to be, is governed by statute, and that statute does not require that a movant first seek the opposing party's agreement or acquiescence before moving for an order in aid of judgment. The procedural rules are not meant to alter that statutory scheme. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

In the case of certain motions, the court, in its discretion, has, and will, overlook the lack of a formal Rule 6(d) certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

The purpose of prior consultation to obtain the non-movant's agreement or acquiescence to the relief being sought is to decrease litigation costs when compromises are reached, and in turn reduce the court's workload, thereby increasing its ability to attend to other matters and minimize delays. The court, however, is not required to deny a motion because it lacks certification that the opposing party's agreement or acquiescence was previously sought, and such a decision is within the court's discretion. Smith v. Nimea, 16 FSM R. 186, 188 (Pon. 2008).

Of the two elements of a complete motion explicitly mandated in the FSM Rules of Civil Procedure, the certification of agreement or acquiescence, is not absolutely mandatory since there are situations where Rule 6(d) certification may not make sense. In the case of certain motions, the court, in its discretion, has, and will, overlook the lack of a formal Rule 6(d) certification when it is apparent from the motion's nature that no agreement would ever be considered by, or forthcoming from, the opposing party and that any attempt to seek such an agreement would be futile. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 224 (Kos. 2010).

Since a movant is least likely to procure agreement or acquiescence for a hostile or adversarial motion, and since there are few motions more hostile or adversarial than one for an order to show cause why the opposing party should not be held in contempt, it is clear that no agreement would ever be considered by, or forthcoming from, the opposing party in such a situation. Thus, although the movant takes the risk that the absence of the certification might result in the motion's denial, the court, in its discretion, may find that lack of formal certification was not fatal to the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

The FSM Civil Rule 6(d) requirement of acquiescence is not absolute, particularly where the motion is of a nature that acquiescence would not be forthcoming. When the factual allegations in the movant's supplement to its motion to dismiss satisfies the court that no acquiescence would have been forthcoming, and that any attempt would have been futile, the court will not deny the motion on this ground. Berman v. Pohnpei, 18 FSM R. 67, 71 (Pon. 2011).

Although Rule 6(d) requires that motions contain both a memorandum of points and authorities and a certification that a reasonable effort has been made to obtain the opposing party's "agreement or acquiescence" and whether it has been obtained, only the failure to include points and authorities results in the motion's mandatory denial. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

Whether the court denies a motion because it lacks a certification concerning the opposing party's "agreement or acquiescence," is a matter left to the court's discretion, and, in the case of certain motions,

the court has, and will, overlook the lack of a certification when it is apparent from the motion's nature that no agreement would ever be forthcoming from the opposing party and that any attempt to seek such an agreement would be futile. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

Since the Rule 6(d) requirement of acquiescence is not absolute, particularly when the motion is of a nature that acquiescence would not be forthcoming, when the court is satisfied that no acquiescence would have been forthcoming and that any attempt would have been futile, the court will not deny a motion on this ground. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 152 (Chk. 2013).

The certification requirement of FSM Civil Rule 6(d) is not mandatory when it is apparent from the motion's nature that no agreement would ever be considered by or forthcoming from plaintiffs and that any attempt to seek such an agreement would be futile. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 370 (Pon. 2014).

– Motions – Sua Sponte

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Generally, a court may not raise the defense of res judicata on its own motion. However, in the

interest of judicial economy, a court may properly raise the issue of res judicata when both actions have been brought in the same court. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a court makes a motion sua sponte, it must give the parties notice and an opportunity to respond before it decides; just as when a party makes a motion, the other party generally must be given an opportunity to respond before the court rules. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a court (sua sponte) makes its own motion, it must give the parties notice and an opportunity to be heard before it grants or denies its own motion just as when a party makes a motion, the other party generally must be given notice and an opportunity to respond before the court rules. This does not include motions that the rules permit to be made *ex parte* or without notice, but motions for sanctions always require notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 & n.4 (App. 2012).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Under certain circumstances, res judicata can be raised sua sponte. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

– Motions – Unopposed

Where a defendant has not filed a response to a motion for summary judgment within the ten days provided by FSM Civil Rule 6(d), the defendant is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Actouka v. Kolonia Town, 5 FSM R. 121, 123 (Pon. 1991).

Although failure to oppose a motion operates as a consent by the opposing party to the granting of the motion, the court is not bound to grant motion simply because it is unopposed. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. In re Parcel No. 046-A-01, 6 FSM R. 149, 153 (Pon. 1993).

Where there is no timely opposition filed after the service of a motion, the opposing party is considered to have consented to the motion. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

While it is true that failure to file a timely opposition is deemed a consent to the granting of the motion, FSM Civ. R. 6(d), proper grounds for the granting of the motion must still exist before a court may grant it. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994).

Although failure to timely file an opposition to a motion is deemed a consent to the motion, proper grounds for the granting of the motion must still exist before the court may grant it. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

A court may not grant a motion unless proper grounds to do so exist even though the nonmoving party has failed to timely oppose the motion and is deemed to have consented to it. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

While failure to file a timely opposition is deemed a consent to the granting of the motion there still must be proper grounds for granting of motion before a court may do so. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 68 (Chk. 1997).

Because failure to file an opposition to a motion is deemed a consent to it a party failing to file an opposition will not be allowed to argue it orally. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 68 (Chk. 1997).

When defendants do not oppose a motion, they are deemed to have consented to it, but before a motion can be granted, proper grounds must exist. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

Failure to oppose a portion of a motion may be considered a consent to that portion of the motion, but a court still needs proper grounds to grant the motion. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Failure of the opposing party to file responsive papers shall be considered by the court as consent to the granting of the motion. Welle v. Walter, 8 FSM R. 572, 573 (Chk. S. Ct. Tr. 1998).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it can grant the motion. Bank of Guam v. O'Sonis, 9 FSM R. 197, 198 (Chk. 1999).

Failure to respond to a motion generally operates as consent to the granting of the motion; at the same time, the motion will not automatically be granted, and must be well grounded in law and fact. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Marar v. Chuuk, 9 FSM R. 313, 314 (Chk. 2000).

When no response to a summary judgment motion appears in the record and the opposing party does not appear at the noticed hearing the motion is due to be granted for that reason alone. Udot Municipality v. Chuuk, 9 FSM R. 586, 587 (Chk. S. Ct. Tr. 2000).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it may grant the motion. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

Even though failure to timely oppose a motion is deemed a consent to that motion, a court still needs proper grounds before it can grant the motion. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

Even though failure to timely oppose a motion is deemed a consent to that motion, the court still needs proper grounds before it may grant the motion. Moses v. Oyang Corp., 10 FSM R. 273, 275 (Chk. 2001).

Failure to timely oppose a motion is deemed a consent to that motion. Even so, a court still needs

proper grounds before it can grant that motion. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Failure to timely oppose a motion is deemed a consent to that motion, but good grounds are still needed before the motion may be granted. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389-90 (Chk. 2001).

Failure to file a memorandum in opposition to a motion is deemed a consent to the motion, but the motion must have proper grounds before it can be granted. Shrew v. Kosrae, 10 FSM R. 533, 534 (Kos. S. Ct. Tr. 2002).

Failure to oppose a motion is deemed a consent to the motion. Talley v. Talley, 10 FSM R. 570, 571, 572 (Kos. S. Ct. Tr. 2002).

Failure to respond to a motion may be deemed a consent to granting the motion, but even when a party fails to respond, the motion may be granted only if it is grounded both in law and fact. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

Failure to file a timely opposition is deemed a consent to the granting of the motion, but proper grounds to grant the motion must still exist before a court can grant it. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

Failure to oppose a motion to enlarge time is generally deemed a consent to the motion. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

If the court were to consider an untimely filed response to a motion as a failure to file an opposition, such failure to oppose is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant a motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

Failure to respond to a motion may be deemed consent to the granting of the motion, but there still must be a basis in law and fact justifying the relief requested in order for the court to grant the motion in the absence of a response. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495 (Chk. 2004).

Even when a party toward whom a motion is directed does not respond, there must be a good basis in law and fact for the granting of the motion. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 637 (Kos. 2004).

Failure to file a timely opposition to a motion (not later than ten days after service of the motion) is deemed a consent to the motion and the court, may in its discretion, refuse to hear oral argument in opposition to the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 18 (Kos. S. Ct. Tr. 2004).

The "statute of limitations" is an affirmative defense which must be raised in either the answer or in a motion to dismiss. A plaintiff's failure to timely oppose a defendant's motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Nonresponse may be deemed consent to the motion, but there still must be a basis in law and fact for

granting the motion. Clarence v. FSM Social Sec. Admin., 13 FSM R. 34, 35 (Kos. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

When the plaintiff did not file any timely opposition to the defendant's motion to dismiss, the plaintiff's failure to file a memorandum in opposition to the motion to dismiss is deemed a consent to the motion. However, even without opposition, the court still needs good grounds before it can grant the motion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

Failure to file responsive papers to a motion is deemed a consent to the motion, and a party failing to file responsive papers to a motion will not be allowed to argue it orally. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 123-24 (Chk. 2005).

When no opposition has been filed to a motion, it is generally deemed a consent to that motion. Bank of the FSM v. Aisek, 13 FSM R. 162, 165 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion, which must be well grounded in law and fact. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Mailo v. Chuuk, 13 FSM R. 462, 470, 471, 472 (Chk. 2005).

When no opposition has been filed to a motion, it is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

Failure to respond to a motion is deemed consent to the granting of the motion. However, in the absence of a response there still must be a basis in law and fact for granting the motion. Emmanual v. Kansou, 13 FSM R. 527, 528 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Stephen v. Chuuk, 13 FSM R. 529, 531 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. For even an unopposed motion to be granted, it must be well grounded in law and fact. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 553 (Chk. 2005).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Because failure to timely respond to a motion is deemed a consent to that motion, a motion to strike may be granted when the defendants had ten days to respond to it and did not. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

When the plaintiffs had ten days from the date of service to respond to the motion if served personally and sixteen days to respond if served by mail, but no opposition was filed, their failure to oppose a motion is deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. Harper v. William, 14 FSM R. 279, 281 (Chk. 2006).

The failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant a motion. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When no response was filed to a motion, the non-response is deemed consent to the granting of the motion. A basis in law and fact must nevertheless exist to grant the motion. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

Even though failure to timely oppose a motion is deemed consent to the motion, a court still needs good, proper grounds before it may grant the motion. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. For the court to grant a motion, even if it is unopposed, it must be well grounded in law and fact. Ruben v. Petewon, 15 FSM R. 605, 607 (Chk. 2008).

Although failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM R. 333, 334 (Chk. 2009).

Under FSM Civil Rule 6(d), failing to oppose a motion is deemed consent to the motion, however, the court must still determine that there is a basis in fact and law for the requested relief before granting the motion. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 469 (Chk. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 634 (Yap 2009).

Failure to oppose a motion is deemed a consent to the motion, but, in order for the court to grant it, the motion still must have a sound basis in law and fact. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

Despite a failure to file a timely opposition being deemed as consent to granting of the motion, proper grounds for granting the motion must still exist before a court may grant it. Smith v. Nimea, 17 FSM R. 125, 128 (Pon. 2010).

Although failure to oppose a motion is generally deemed a consent to the motion, even when there is

no opposition, the court still needs good grounds before it can grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 149 (Pon. 2010).

When no opposition has been filed to a motion, the failure to oppose is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178 (Pon. 2010).

For a motion to be granted, even if unopposed, it must be well grounded in law and fact, and not interposed for delay. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178 (Pon. 2010).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Failure to file an opposition is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion, especially when the non-movants were permitted, without objection, to orally oppose the motion. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011).

Even when a motion is unopposed, a court still needs good grounds in order to grant it. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Failure to oppose a motion is generally deemed a consent to the motion. But even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 409 (Pon. 2011).

By rule, the court deems failure to oppose a motion as consent to the motion, but even then, the court still needs good grounds before it can grant the motion. Kaminanga v. Chuuk, 18 FSM R. 216, 218 (Chk. 2012).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact upon which to grant the motion. Aunu v. Chuuk, 18 FSM R. 467, 468 (Chk. 2012).

Although the failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant an unopposed motion. For a motion to be granted, even if unopposed, it must be well grounded in law and fact. Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When the plaintiffs have not filed a timely opposition to the defendants' motions to dismiss, they are deemed to have consented to those motions. However, the court still needs to establish that proper grounds exist before it may grant those motions. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When the plaintiff timely filed an unopposed motion for enlargement of time to file closing arguments because his counsel was traveling in Chuuk and since the defendant consented to the motion by electing not to respond, the motion for enlargement of time was granted *nunc pro tunc*. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 471 (Pon. 2014).

While, by rule, the failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant an unopposed motion. Even for an unopposed motion to be granted, it must be well grounded in law and fact. Eot Municipality v. Elimo, 20 FSM R. 7, 9 (Chk. 2015).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then the court still needs good grounds before it can grant the unopposed motion. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015).

When there is no timely opposition filed after proper service of a motion, the adverse party is considered to have consented to the motion. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The court is not bound to grant motions as a matter of course simply because they are unopposed. Even when unopposed, a motion must be well grounded in law and fact, and not interposed for delay. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then, the court still needs good grounds before it can grant the unopposed motion. Thus, even if the court were to consider a renewed motion unopposed because, although the plaintiff filed an opposition to the original motion, it did not file an opposition to the renewed motion, the court would still need to determine if good grounds exist to grant it. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Pillias v. Saki Stores, 20 FSM R. 391, 393 (Chk. 2016).

Although the absence of opposition is generally deemed consent, a court still needs good grounds before it can grant an unopposed motion. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

Failure to oppose a motion is deemed consent to the motion, but even without opposition, the court will not grant the motion unless it is well grounded in fact and law. Helgenberger v. Chung, 20 FSM R. 519, 520 (Pon. 2016).

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then the motion must be well grounded in law and fact before the court can grant the unopposed motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

When there is no timely opposition filed after proper service of a motion, the adverse party is deemed to have consented to the motion, but even then, the court still needs good grounds before it can grant the motion. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from that party. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

Even when there is no opposition filed and consent deemed given, the court still needs good grounds before it can grant the motion, especially when the non-movant was permitted, without objection, to orally oppose the motion. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

By rule, failure to oppose a motion is deemed a consent thereto, but even then, the court still needs

good grounds before it can grant the motion. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

– New Trial

A motion for a new trial may be filed before the entry of judgment. Walter v. Meippen, 7 FSM R. 515, 517 (Chk. 1996).

A new trial may be granted to all or any of the parties and on all or part of the issues for manifest error of law or fact, or for newly discovered evidence. Conrad v. Kolonia Town, 8 FSM R. 215, 216 (Pon. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM R. 215, 217 (Pon. 1997).

It is not a manifest error of law or fact requiring a new trial that the court held police officers liable for battery without determining exactly which officer's action caused plaintiff's injury when the court found that each of the defendants had participated in plaintiff's arrest, the court discussed the issues of justifiable force and privilege throughout its decision, and found that defendants had acted with intent to bring about a harmful or offensive contact with plaintiff, which was not justified under the circumstances. Conrad v. Kolonia Town, 8 FSM R. 215, 217-18 (Pon. 1997).

A motion for a new trial will be denied when the movant has not demonstrated that a manifest error of law or fact existed. Conrad v. Kolonia Town, 8 FSM R. 215, 218 (Pon. 1997).

A motion for a new trial will be denied when medical expenses were properly awarded as an element of damages against a negligent tortfeasor and when no legal error resulted from the court's reliance on another case because the court's finding that the plaintiff was working for the movant, and being supervised by his foreman when the accident occurred was similar to facts of the other case. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A new trial is granted only for manifest error of law or fact, or for newly discovered evidence, and will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A motion for new trial may be filed before the entry of judgment. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

A motion for new trial will be denied when the movant has not demonstrated that a manifest error of law or fact existed. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

The trial court may deny a motion for new trial when the motion's basis is the judge's failure to recuse himself and the party making the motion was, since the beginning of the case, aware of the information upon which the motion is based. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

When a justice was not required to recuse himself from a matter, his failure to recuse himself does not constitute manifest error of law and a motion for a new trial on that basis will be denied. Tolenoa v. Kosrae,

11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

In a case that has been reversed and remanded a new trial may not be necessary when a complete trial transcript was prepared for the appeal, but if the trial court deems it necessary, it may take further evidence. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

When a petition for a rehearing is based on the court's ruling in a trial *de novo*, the petition is analogous to a motion for a new trial under the Chuuk Civil Rules of Procedure. The only legal grounds for a new trial are when there is a manifest error of law or fact, or for newly discovered evidence. A motion for a new trial will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

When the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision, it is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, and, if for some reason, a party is unable to produce relevant evidence at the time set for trial, the problem should be brought to the court's attention before the trial has begun. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 & n.1 (Chk. S. Ct. App. 2007).

When no valid reason was given why a party was unable to present particular evidence at trial, it will not be considered "newly discovered." The reason for only allowing a rehearing where there is bona fide newly discovered evidence is that the court cannot afford litigants the opportunity to try again and again, on a hit and miss basis, to present evidence upon a particular issue. Thus, when no valid reason is given for failing to produce evidence at trial and no new evidence is presented that was located after the close of trial, it will not be fruitful to plow the same ground again, and a motion for a new trial will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

When the only discernable bases for a petition for a new trial are that the court should have been more persuaded by the evidence the petitioner submitted and that he could have submitted other evidence if he had known it would have been persuasive and that the court should have helped him discover evidence supporting his case, none of these bases qualifies as either a manifest error of law or fact or "newly discovered" evidence, and the petitioner's motion for a new trial will be denied since he is asking that the court give him another trial because his counselor did not present all the available evidence in the first trial. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

It is not the province of the court to prepare a party's case but that of counsel. Clients must be held accountable for their attorneys' acts or omissions. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel because to grant relief in such circumstances would penalize the nonmoving party for the conduct of the moving party's counsel. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

If by reason of the disability of the judge before whom an action was been tried, the judge is unable to perform the court's duties after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties unless the other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason the other judge may in his or her discretion grant a new trial. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Small claims cases are heard in the Kosrae State Court trial division under a simplified small claims procedure since a separate division or department was not created within the State Court for small claims.

A small claims judgment is not the final action that can be taken in the State Court trial division since either party to a small claim judgment may have a new trial in the same court according to the usual trial procedure for large claims by filing a request for new trial within 30 days after the small claims judgment. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648-49 (App. 2011).

The word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor and in Kosrae Civil Procedure Rule 87(i), the discretion is exercised by a small claims judgment-party. The judgment-party decides whether there will be a new trial. If the party asks within 30 days, then there must or shall be a new trial following the usual procedures for civil cases. The procedure is, if a party in a small claims action is dissatisfied by the judgment, the party can get, by asking within 30 days, a new trial that follows the regular civil action procedure. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649 (App. 2011).

The grounds on which a court may grant a new trial or alter or amend the judgment is either when the court has made a manifest error of law or fact, or for newly discovered evidence. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

When no valid reason was given why a party was unable to present particular evidence at trial, it will not be considered "newly discovered." The reason for allowing a rehearing only when there is bona fide newly discovered evidence is that the court cannot afford litigants the opportunity to try again and again, on a hit or miss basis, to present evidence upon a particular issue. Thus, when no valid reason is given for failing to produce evidence at trial and no new evidence is presented that was located after the close of trial, it will not be fruitful to plow the same ground again, and a motion for a new trial will be denied. Senate v. Elimo, 18 FSM R. 199, 201-02 (Chk. S. Ct. Tr. 2012).

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

A Rule 59 motion for a new trial must be served not later than ten days after entry of the judgment, but a motion that purports to be a Rule 59(b) motion for a new trial will not be denied merely because it is untimely since a Rule 59 motion served after the ten days has expired will be, and can only be, considered a Rule 60(b) motion for relief from judgment. George v. Palsis, 20 FSM R. 174, 176 (Kos. 2015).

A motion for a new trial or for relief from judgment will be denied when none of the purported "newly discovered evidence" that it relies upon qualifies as newly discovered evidence which by due diligence could not have been discovered earlier. George v. Palsis, 20 FSM R. 174, 176-77 (Kos. 2015).

Evidence, that by its very nature, was in the plaintiff's possession the whole time cannot be considered "newly discovered" evidence especially when the motion for a new trial or relief from judgment does not address the plaintiff's complete failure to produce the evidence at trial. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

– Notice

Constructive notice is a concept through which actual notice is imputed to a party regardless of whether that party has actual knowledge of the imputed facts. A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising a reasonable care to acquire knowledge of the fact in question or to infer its existence. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 n.11 (Pon. 1995).

Substantial, open and notorious occupation of land is constructive notice of occupant's claim and puts all persons on inquiry as to the nature of occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177-78

(Pon. 1995).

A plaintiff cannot contend that he had no notice of his causes of action until a certain date when before that date he had filed a prior suit involving the same claims and land. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 181-82 (Pon. 1995).

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial's afternoon session, he was not the party's counsel of record as of the date the notice of trial was served, and it is immaterial whether he received the notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 378-79 (Pon. 2001).

No hard and fast rule for determining what notice of trial is adequate can be made, as any such rule would be arbitrary. While the law requires that adequate notice be given, it does not require that any particular type or kind of notice be given, so that a written notice is not required; a party's actual knowledge of the trial date is sufficient. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

Personal service on a party of a trial subpoena that gave clear, unambiguous notice to that party of the time and place of trial more than seven weeks before trial, constituted adequate timely notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

There was no defect in service when a person who had been subpoenaed for trial as a witness, was also a party to the litigation, who was representing himself. As such, he is to be credited with knowing that "trial" means exactly that, a final determination of the merits of the case. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Except as otherwise provided in the rules or by court order, every written notice must be served upon each of the parties. It is mandatory for the court to serve notices on parties, unless they are in default. The court must insure that its own notices and orders are properly served on *pro se* litigants – *pro se* litigants should not be compelled to rely upon opposing counsel to inform them of a trial date. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial, and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A corporation has received notice when its officers promptly received a default notice in which all the information was correct except the P.O. box number and the names in the greeting and when, even if those flaws were not in strict compliance with the written notice requirement, the accuracy of the rest of the document constitutes constructive notice. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising a reasonable care to acquire knowledge of the fact in question or to infer its existence. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

When a guaranty itself does not require a notice of the principal's default to the guarantors and when the relationship between the debtor and the guarantors is such that the guarantors may be charged with notice of the debtor's situation without a formal notice of default, separate notice to the guarantors is not required. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Defective notice issued by the Land Commission, if repeated by the Land Court, merely becomes defective notice issued by the Land Court. The Land Court has a statutory obligation to independently determine who are the claimants to a parcel, and who are entitled to notice of the proceedings. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

The notice required by state law is intended to reach all parties, claimants and provide notice to the general public on the schedule of proceedings. The statutory notice required includes notice to the public: posting of the notice in at least three conspicuous places or at least two areas of public access and further notice to the public is required by posting at the municipal building of the municipality where the property is located and through announcements on the Kosrae radio station on several occasions. Notice to parties, claimants, and public is provided by at least two separate postings of the notice in different locations, and notice by radio broadcast. These substantial requirements for notice of land proceedings reflect the Kosrae Land Court's calculated goal to reach as many claimants, parties and members of the general public as possible. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

When a default notice mailed by the to AHPW which had an incorrect box number and salutation but was received by an appellant and the information in the notice (AHPW's name, the correct loan account number, the original loan amount, the agreed repayment amount, the amount in arrears, the number of days in arrears, and the date of the last payment) was sufficient to put him on notice that AHPW had defaulted on its loan, the trial court correctly found that AHPW had both actual and constructive notice of the default and that the guaranty itself did not require notice to the guarantors, but that they nevertheless had notice of the default in light of their positions as AHPW's directors. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

A person's certificate of title on file at the Chuuk Land Commission constituted notice to the world of that person's ownership of all of the land it was for and that certificate and the Plat No. cited constituted notice of the boundaries of the ownership. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Constructive notice is a concept through which actual notice is imputed to a party regardless of whether that party has actual knowledge of the imputed facts. A party has constructive notice when from all the facts and circumstances known to him at the relevant time, he has such information as would prompt a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Substantial, open, and notorious occupation of land is constructive notice of the occupant's claim and puts all persons on inquiry as to the nature of the occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Notice served on a represented party's attorney of record is notice to the party because clients must be held accountable for their attorneys' acts or omissions. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

When the original complaints were served on the Governor and the Pohnpei Attorney General and when, if the State had been named as a defendant, service of process on the State would have been made on the Pohnpei Attorney General, the state therefore had actual notice of the suit and actual notice of the preliminary injunction hearing. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

When the Receiver takes possession of wreck, he must cause a description of the wreck to be: 1) broadcast on at least one radio station in each state; 2) published in the local newspaper, if any; 3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital. This is notice to the public or the world. Notice to the owner, captain, and crew is another matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The defendant's receipt of documents about the arrest of its vessel and its participation in the arrest proceedings before the court did not, regardless of the effect of those proceedings on the class plaintiffs' claims against certain defendants, constitute notice to anyone that the FSM Receiver had taken possession of the stranded vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Even if the 19 F.S.M.C. 907 notice was never given to the public, actual notice to the owner is sufficient for a claim against the owner. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When a party has had actual notice of the receivership it cannot complain that the notice is defective because it did not also get notice by publication or constructive notice that, if given, might still never come to the party's attention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The law does not favor the willfully blind. Willful blindness is usually considered as the legal equivalent of actual knowledge. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named

defendants were duly served with a summons and complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Notice served on a represented party's attorney of record is notice to the party. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

– Parties

Either the husband or the wife may prosecute or defend a civil action in which one or both are parties, provided that he or she has informed his or her spouse of the representation. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Plaintiffs' children are not entitled to recover damages when they are not named as plaintiffs to the action. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 542 (Pon. 1998).

Natural persons generally have the capacity to sue or be sued. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Actions are prosecuted in the name of the real party in interest. An assignment passes title to the assignee so that he is the owner of any claim arising from the chose and should be treated as the real party in interest. When all rights to a claim have been assigned, courts generally have held that the assignor no longer may sue. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 86 n.1 (App. 1999).

When a defendant counterclaims against the original plaintiff and new additional parties, as to claims between the original parties the original plaintiff is designated plaintiff/counterdefendant while the original defendant is designated defendant/counterplaintiff, and as to new parties on the counterclaim, the original defendant is designated counterclaim plaintiff, while the new parties are designated counterclaim defendants. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

All parties must be named in the complaint. The only exception the rules allow to this requirement that parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

The mere filing of a motion to intervene will not give a person party status because persons seeking to intervene in a case cannot be considered parties until their motion to intervene has been granted. Motions to intervene are not granted automatically, nor does their filing constitute an automatic stay. Moses v. Oyang Corp., 10 FSM R. 273, 276 (Chk. 2001).

An action's title should include the names of all the parties but the caption is not determinative as to parties to action. If the body of the complaint correctly identifies the parties, courts will generally allow amendment to correct technical defects in the caption. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 n.1 (Chk. 2001).

All plaintiffs should be named in the complaint's caption, and certainly in the complaint's body as well. The defendants have a right to know the identity of those suing them. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 n.1 (Chk. 2001).

When the plaintiffs' prayer for injunctive relief that sought to bar the defendants from interfering with the plaintiffs' claimed ownership interests in tideland and when it was the defendants' destruction of a *mechen* sign that caused the plaintiffs to resort to court action and seek injunctive relief, the defendants, who as *afokur* may have themselves claimed some property use rights in the tideland, were thus proper parties to the suit even once they declined to claim ownership for themselves. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158-59 (Chk. 2002).

In Chuuk, it has been common practice for one joint owner to sue as a representative of himself and other joint owners, or for the lineage as a whole to sue as one party, but when neither is what was done in the case and the plaintiff's complaint asserted that he was the sole owner of the land allegedly trespassed upon, a defendant's motion to add the land's co-owners as parties-plaintiff must be granted. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

In consolidated cases that have become a quiet title action, the proper and indispensable parties to the action include without limitation all persons who the record indicates may claim any intererst, wherever derived, in any portion of the land. Pastor v. Ngusun, 11 FSM R. 281, 286 (Chk. S. Ct. Tr. 2002).

An assignee is generally the real party in interest. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

Every action must be prosecuted in the name of the real party in interest. But no action will be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution will have the same effect as if the action had been commenced in the name of the real party in interest. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

Absent an order dismissing it, a defendant is still a party despite its deletion from the case caption. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

A d/b/a is not a party. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

A party who was originally a defendant but who is not named as a defendant in the plaintiffs' first amended complaint will remain a party to the action by virtue of his counterclaims against a plaintiff. Ambros & Co. v. Board of Trustees, 12 FSM R. 124, 126 n.1 (Pon. 2003).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his

claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 248 (Chk. 2003).

When an entity is in possession of a plot of land because its tower sits on it, and the plaintiffs seek relief against it, and since it has an interest in maintaining its possession of the plot, it is, or should be, a party-defendant. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the Heirs of Nelson was a claimant and a party before the Kosrae Land Court and is the party who was served the Kosrae Land Court decision, an individual heir, as an individual, was not a claimant nor a party before the Kosrae Land Court. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195-96 (Kos. S. Ct. Tr. 2005).

Co-owners of land are generally considered indispensable parties to any litigation involving the land. A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

A d/b/a is not a party. A d/b/a is just another name under which a person operates a business or by which the person or business is known. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

No law requires a civil litigant to be physically present in the courtroom during trial if that party is present through counsel. Amayo v. MJ Co., 14 FSM R. 355, 361 n.1 (Pon. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. While the Land Commission may be a necessary party to such an action, the titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title who must be joined, or any ensuing adjudication is void. Dereas v. Eas, 14 FSM R. 446, 455 n.3 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party.

Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Since, in any lawsuit that would remove someone's name from a certificate of title or that would deprive a person of ownership of the registered land that the certificate or determination represents, the constitutional right to due process requires that that person is an indispensable party to the action, an August 20, 1998 judgment that was rendered without either titleholder having been made a party to the case and having had an opportunity to be heard is thus void, and could be collaterally attacked by later civil actions. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Since a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution, or until it is amended or repealed; since nothing in the Trust Territory survival of actions statute is inconsistent with the Chuuk Constitution; and since the statute has not been amended or repealed, 6 TTC 151(1) remains the law in Chuuk. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

When the court is not convinced that complete relief under the original judgment cannot be afforded the defendant without joining non-parties as parties plaintiff; when filing a new civil action based upon the judgment is an available option and more properly suited to this situation involving a third person who was not, under any theory advanced, connected with the action during its first decade of litigation; when it is unclear whether the non-parties are claiming an interest in the land that is subject to the action and the action is not the proper forum for making such a determination; there is no need to join the non-parties as parties plaintiff in a post-judgment matter and the court will continue the action by the original plaintiff as explicitly provided for by Rule 25(c). Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A dba is not a party. Pohnpei Port Auth. v. Ehsa, 16 FSM R. 11, 12 n.1 (Pon. 2008).

When one of two defendants against whom a judgment is to be entered is a d/b/a of the other, the other is essentially the only defendant against whom the judgment will be entered. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 223 n.1 (Chk. 2008).

Since joint tortfeasors are not indispensable parties, leave to amend a complaint to drop an alleged joint tortfeasor from the suit should be freely given. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

When a plaintiff has filed a lawsuit as "Perdus Ehsa dba Pohnpei Foods and Services," he has filed the lawsuit as an individual and not on behalf of any of his companies or corporations since a dba cannot be a party to a civil action. Since no other corporation owned or operated by the plaintiff is a party to this case, the court must treat the action as having been brought by the plaintiff individually. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

There is no legal basis for a motion to dismiss for failure to join a indispensable party when the person the defendant asserts is an indispensable real party in interest is in fact a party as he is one of the plaintiff heirs of Edmond Tulenkun and when it is not correct that the person who funded the $500 in issue is an indispensable party since this person was not a party to the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

The FSM Development Bank and the State of Pohnpei are not one and the same. The bank is a creature of national statute, with its duties and functions delineated. In contrast, the State of Pohnpei is a constitutionally organized state of the FSM. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

When the plaintiff urges the court to hold the lessors' certificate of title null and void ab initio, the lessors, as registered titleholders, would need to be joined if the suit for trespass against the lessee were to proceed. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

Public policy cannot abide by the perverse result that would never leave a title quiet if the court were to recognize an indefinite expectancy right for a person to inherit his living parent's land and require a complainant to name all the landowner's children. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When a landowner's children do not have a vested interest in the land, the foreclosure statute does not require a judgment creditor to name them as defendants. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Unless that party has been subpoenaed as a witness, a civil litigant is not required to be physically present for trial if that party is present through counsel. FSM v. Kana Maru No. 1, 17 FSM R. 399, 402 (Chk. 2011).

A person operating as a d/b/a is a sole proprietorship that has no legal existence separate from that of its owner and its acts and liabilities are those of its owner and its owner's acts and liabilities are those of the sole proprietorship. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. A motion to dismiss for failure to join necessary parties is accordingly denied without prejudice and may be renewed if the circumstances warrant. Marsolo v. Esa, 18 FSM R. 59, 63 (Chk. 2011).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

When the Governor was sued in his official capacity and when the original complaints were served on the Governor and the state attorney general so that the state had actual notice of the suit, the state was a party in all but name when the preliminary injunction motions were heard. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

A plaintiff, who challenges another's right to an interest in land and seeks to exercise an interest in land that excludes that other's supposed rights to the land, ought to, as a matter of due process, name that other as a party defendant. Otherwise that other party will be deprived of its interest without notice and an opportunity to be heard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

A party that believes that it has a leasehold interest in a site is a necessary and very probably an indispensable party to the lawsuit when, if the plaintiffs are successful in the lawsuit, the party will not have any leasehold interest in the site. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The successful bidder on a public contract is a necessary and indispensable party to litigation by an unsuccessful bidder that challenges the public bidding process. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

When a complaint is against an individual d/b/a as a corporation, despite any indications to the contrary, there are, as a matter of law, two defendants in the trial court case and two cross-appellants in this appeal – the individual and the corporation. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The purpose of the rule permitting an executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute to sue in that person's own name without joining the party for whose benefit the action is brought, is to relax the strict common law rules requiring an action at law be brought by, or in the name of, the person holding legal title, and at the same time to assure the defendant of the judgment's finality and protection from further harassment or vexation at the hands of other claimants to the same demand. The rule's failure to refer to the benefitted party in its list of persons qualified as real parties of interest does not have the effect of preventing that party from suing. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

The real party of interest in a civil action is the party who possesses the substantive right to be enforced. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

The real party in interest rule neither enlarges nor restricts a party's substantive right to recover in a particular action; thus, the substantive right to make the alleged claim must be found to exist before issue of appropriateness of the parties comes to the fore. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

When the FSM Development Bank has an unpaid judgment entered by the FSM Supreme Court trial

division and the debt was secured by a mortgage, the bank is the beneficiary and has a right to collect judgments and foreclose on property pursuant to state law. This substantive right creates the status of real party in interest for the bank in the national courts. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

As an instrumentality of the government, the FSM Development Bank is, under Civil Rule 17's third party beneficiary clause, a real party in interest for the purposes collecting judgments from a party, limited by the land clause exception in article XI, § 6(a), and whenever "land is at issue" the national forum is no longer available so that if and when title to the land is disputed by the parties, the proceedings on that issue must be dismissed, or alternatively, the issue may be certified to the state court. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435-36 (App. 2014).

Under Civil Rule 17's third party beneficiary clause, judgment creditors are real parties in interest when pursuing many preliminary and auxiliary matters relating to the probate of estates. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

A parent corporation named as a defendant on the theory that it was liable for the conduct of the board members and executive director of its subsidiary corporation, will be dismissed when there is no evidence that it is the alter ego of the parent corporation and when there is no evidence (or even allegation) that it is a shell corporation with no assets and that therefore there is a need to pierce the corporate veil in order to obtain any relief. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

When, in response to the defendants' interrogatories asking the plaintiff about all facts that gave rise to the certain defendants' liability both individually and as board members, the plaintiff responded that he had none, those defendants will be dismissed. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When there are no factual allegations that a defendant took any actions or failed to take any action in an individual capacity, he will be dismissed as a defendant in his individual capacity. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When the defendants have not shown that they have a right, as a matter of law to a corporate official's dismissal in his official capacity, he will be dismissed only in his individual capacity, but when the plaintiff has alleged actions by another official that, if true and if proven, would give rise to tort liability for the violation of the plaintiff's civil rights, that person will not be dismissed as a defendant. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

Although penalties can only be assessed against persons – natural persons or business enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

When all alleged acts by the defendants sued in their official and personal capacities were acts servicing the loan that they could only have done in their official capacities, the defendants, in their individual capacities, will be dismissed as parties. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The national government has decided, by statute, that it will defend its interests in an action for judicial review of a tax assessment through its Secretary of Finance, who will be the named defendant. The deletion of other parties as named defendants therefore seems proper. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

– Parties – "John Doe"

Because the use of John Doe plaintiffs is limited to those rare cases where for privacy concerns of a highly personal and sensitive nature the plaintiff's identity is kept secret, when no such privacy considerations are present and the defendants ask the court to add fictitious plaintiffs that are unknown and quite probably nonexistent, joinder of John Does as party plaintiffs will be denied. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

Replacing an unnamed or "John Doe" party with a named party in effect constitutes a change in the party sued and can only be accomplished when the specifications of Rule 15(c) are met. Thus the presence, or addition, of described, but unnamed defendants would serve no purpose. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

No statute or rule specifically countenances the naming of fictitious, or "John Doe," defendants. The better practice is to move under Rule 15 of the FSM Rules of Civil Procedure for leave of court to add parties as their identities become known. Amayo v. MJ Co., 10 FSM R. 244, 254 (Pon. 2001).

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412-13 n.1 (Pon. 2001).

Proceeding against unknown defendants has not been authorized by the FSM Rules of Civil Procedure. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 507 (Yap 2004).

When a verified complaint makes no allegations against persons known or thought to exist but whose identities are unknown and the Doe defendants are only mentioned in the caption, it does not appear any purpose would be served by leaving them in the caption. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

Even if the court permitted the inclusion of Doe defendants, in order to replace a Doe defendant with a named party, the plaintiffs would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the Doe defendant with a named defendant, and that to do so, all the Rule 15's specifications must be met, and since even in the absence of John Doe defendants, the plaintiffs can still move to amend their pleadings should the plaintiffs identify through discovery other persons who may be liable on the plaintiffs' claims in a case, the court will dismiss without prejudice the Doe defendants when no reference was made to them in the complaint's body. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 506, 508 (Yap 2004).

A motion to dismiss John Doe defendants will be granted. Naming John Doe defendants is not a pleading practice recognized in the FSM. The John Doe defendants will be deleted from the caption and the caption on the parties' future filings will be consistent with the order. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon. 2005).

Unnamed persons listed as John Doe defendants who were never identified or served process will be dismissed. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

There is no authority to proceed against unknown persons in the absence of a statute or rule, and since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the naming of "John Doe" defendants in *in personam* actions is not a pleading practice recognized in the FSM. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since, in order to replace a "John Doe" defendant with a named party, a plaintiff would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the John Doe defendant with a named defendant, and that to do so, all of Rule 15's specifications still must be met, and since, even in the absence of John Doe defendants, a plaintiff can move to amend her pleadings should she identify through discovery other persons who may be liable on her claims, the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since any judgment *in personam* against an unknown defendant would be void, the retention of "John Doe" defendants is pointless. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the listing of "John Doe" defendants in in personam actions is not a pleading practice recognized in the FSM; therefore the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

– Parties – Juridical Persons

A branch campus of the College of Micronesia-FSM does not have the capacity to sue or be sued on its own and will be dismissed from an action where the College of Micronesia-FSM, a public corporation, is a party. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 441 (Chk. 1998).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

A corporation is a juridical person separate from its owner. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A d/b/a is not a party because a d/b/a is just another name under which a person operates a business or by which the person or business is known. A corporation, however, is a juridical person separate from its owner and would therefore be a separate party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 n.1 (Pon. 2011).

A corporation is not a d/b/a, even if it is wholly owned by one person. It is an artificial, juridical person separate from its owner and is therefore a different person and thus a separate party. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Even if it is wholly owned by one person, a corporation is not and cannot be a d/b/a because a corporation is an artificial, juridical person separate from its owner(s) and is thus a separate party. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The alter ego doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently and specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

When no clear answer to the alter ego question can be determined from the record before the appellate court, it will remand the matter to the trial court for it to determine whether the trial court judgment is against the individual defendant and the corporate defendant, jointly and severally, or just against the corporate defendant and why. Then, if the trial court decides that the judgment was or should now be entered only against the corporation, the plaintiff must be given the opportunity to try to pierce the corporate veil, especially if the corporation is an empty shell, and proceed against the individual personally as the corporation's alter ego. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

– Parties – Minors

In law, an "infant" is a minor, anyone under the age at which they legally become an adult. In the Federated States of Micronesia, an infant would be anyone under the age of eighteen. Tarauo v. Arsenal, 18 FSM R. 270, 273 n.1 (Chk. 2012).

An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. In law, an "infant" is a minor, anyone under the age at which they legally become an adult, which in the FSM is age eighteen. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A minor lacks the capacity to sue on his own, but may sue by next friend. A next friend is a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff but who is not a party to the lawsuit and is not appointed guardian ad litem. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of an injured minor could be overlooked as an error of form, not of substance. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child since the choice to appear *pro se* is not a true choice for minors. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Because the goal is to protect the rights of infants, a complaint should not be dismissed with prejudice as to the minor. The minor may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old, but before then his father may not appear without counsel on his behalf. Pillias v. Saki Stores, 20 FSM R. 391, 396 (Chk. 2016).

– Parties – Official Capacity

All parties must be named in the complaint. The only exception the rules allow to this requirement that

parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

A claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer. A claim against a person "in his former official capacity" has no meaning. If the claimant seeks to hold the offender personally responsible, the claim is against the person in his individual capacity. Since a claim against an offender in his official capacity is, and should be treated as, a claim against the entity that employs the officer, a suit against an individual in his or her "former official capacity" is nonsensical. Herman v. Bisalen, 16 FSM R. 293, 295-96 (Chk. 2009).

The capacity to be sued is usually correlative of the capacity to sue. A person cannot be sued in his "former official capacity" anymore than a person can sue in his or her "former official capacity" because that person no longer represents the entity that once employed him or her. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

Neither the predecessor nor the successor public official has to be named – the plaintiffs may just describe the title or public office being sued. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

When a defendant has been sued in his official and personal capacities and ceases to hold office, his successor in office is automatically substituted for the defendant in his official capacity, but the defendant will remain as a party-defendant in his personal capacity and may potentially be held personally liable. Herman v. Bisalen, 16 FSM R. 293, 296-97 (Chk. 2009).

A suit by a party "in his official capacity" is, and should be treated as, a suit by the entity that employs him. Marsolo v. Esa, 17 FSM R. 480, 485-86 (Chk. 2011).

A suit against an official in his or her official capacity is a suit against that official's office. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

A suit against a person "in his official capacity" is, and should be treated as, a suit against the entity that employs that officer. Therefore a suit against a person in his official capacity as director of the Pohnpei state police is and should be treated as a suit against the Pohnpei state police. Jacob v. Johnny, 18 FSM R. 226, 231-32 (Pon. 2012).

A suit for damages against someone in his official capacity is a claim against the entity or agency that employs that person. Hence, a suit against the Director of Public Safety in his official capacity is a claim against the Pohnpei Department of Public Safety. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

A suit against someone in his official capacity is a suit against the entity that employs that person. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

When all alleged acts by the defendants sued in their official and personal capacities were acts servicing the loan that they could only have done in their official capacities, the defendants, in their individual capacities, will be dismissed as parties. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

Since Rule 25(d)(1) makes the substitution of public officers automatic, it does not require a motion and the grant of the motion for the substitution to take effect. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

A major reason for automatic substitution of public officers in their official capacity or, alternatively, for the use of the officer's official title rather than the officer's name, is that the holders of public office change frequently, and the substitution of one public officer for another would, at best, be a time-consuming formality. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 n.3 (Pon. 2016).

No person can be sued in their "former official capacity." FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

– Parties – Pro Se

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Except as otherwise provided in the rules or by court order, every written notice must be served upon each of the parties. It is mandatory for the court to serve notices on parties, unless they are in default. The court must insure that its own notices and orders are properly served on *pro se* litigants – *pro se* litigants should not be compelled to rely upon opposing counsel to inform them of a trial date. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought

attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

In the trial court, a party has the right to appear pro se. To appear "pro se" means to appear on one's own behalf; without a lawyer. A person appearing pro se thus appears only for himself and does not represent any other person or anyone else. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A party appearing pro se cannot represent anyone else. That would be the unauthorized practice of law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

As a general rule, pro se parties are allowed greater leeway and their pleadings are construed more liberally because of their lack of legal training. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

As a general rule, a pro se party's filings are construed more liberally because of their lack of legal training. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

The court's long-standing usual practice has been to take any response by a pro se defendant as an answer precluding a default judgment and to require the plaintiff to proceed accordingly. Carius v. Johnson, 20 FSM R. 143, 145 (Pon. 2015).

If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of an injured minor could be overlooked as an error of form, not of substance. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

To appear "pro se" means to appear on one's own behalf, without a lawyer. A person appearing pro se thus appears only for himself or herself and does not represent any other person or anyone else. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Because pro se means to appear for one's self, a person may not appear on another person's behalf in the other's cause. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Since a person must be litigating an interest personal to him. For example, a lay person may not appear on behalf of his or her own minor child. Thus, the threshold question becomes whether a given matter is the pro se plaintiff's own case or one that belongs to another. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child since the choice to appear *pro se* is not a true choice for minors. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The rule forbidding a next friend to litigate pro se on behalf of another person is to protect the rights of

the represented party. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

– Parties – Substitution of

The substitution of a party upon the death of a party plaintiff requires an affirmative showing that the cause of action survived the death. Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

When a party has died, a statement suggesting the party's death may be placed upon the record and served in compliance with the rules for service of motions, and if a motion for substitution is not made within 90 days afterward then the action shall be dismissed as to the deceased party. Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

Rule 25(a) clearly contemplates appointment of legal representatives, such as an executor or an administrator for substitution for a deceased party. Relatives of the deceased who are not legal representatives cannot be substituted as parties. The identity of an administrator is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997).

Rule 60(a) allows the correction of clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission. It may be inapplicable when plaintiff's counsel, who, through oversight, was unaware of the exact identity of his own client, seeks to substitute the real party in interest for the originally-named plaintiffs. While Rule 60(a) may be utilized to correct mistakes by the parties as well as those committed by the clerk or by the court, including the misnomer of a party (usually a defendant), it does not appear that the rule may be used to substitute a party plaintiff for the other entities mistakenly named as plaintiffs. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 (Chk. 2003).

The purpose of Rule 17(a) is to allow an assignee to sue in its own name, and it has, more importantly, come to also protect the defendant against later action by the party actually entitled to recover and thus insures that a judgment will have its proper final (res judicata) effect. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Rule 17(a) controls the substituion of the real party in interest when the interest was transferred before the suit was filed, while Rule 25(c) applies if the transfer occurred after the start of the suit. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

When the plaintiffs' motion asks that another entity be substituted in as plaintiff because it is the real party in interest and the motion does not seek to change any claim or the cause of action, the motion will be granted. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Substitution of plaintiffs is allowed under Rule 15 when the substitution does not change the claim or cause of action. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

Once a party's death has been suggested on the record under Civil Procedure Rule 25(a)(1), the ninety-day deadline for making a motion for substitution of that deceased party starts running, and when the ninety days has passed and no motion for substitution or for enlargement of time has been filed, that party will be dismissed. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper

parties, and unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death, the action shall be dismissed as to the deceased party. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

The Secretary of Justice's name will be substituted for that of the former Acting Secretary of Justice because when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the officer's successor is automatically substituted as a party and proceedings following the substitution will be in the name of the substituted party. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

In case of any transfer of interest, the action may be continued by the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. The motion for substitution may be made by any party and shall be served on the parties in the manner provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Lee v. Han, 13 FSM R. 571, 575 (Chk. 2005).

Before the court can act on a motion to substitute a party, the motion would have to be served on all other parties and also on the non-party sought to be substituted and proof of this service should be filed with the court. Lee v. Han, 13 FSM R. 571, 575 (Chk. 2005).

A tort cause of action survives the defendant's death and continues against his personal representative. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

The administrator of the deceased's estate is generally the proper party for substitution rather than relatives of the deceased who are not legal representatives. If the estate has been distributed, then a "successor" may be a proper party. If the representative or successors of the estate were not named, a motion to substitute will be denied. George v. Johnithan, 15 FSM R. 455, 457 (Kos. S. Ct. Tr. 2007).

A court may exercise its discretion to deny substitution of parties if circumstances have arisen rendering it unfair. Thus, when the plaintiff was specifically ordered to file proof of whether a proper party for substitution existed, such as a copy of an order appointing administrator, and to properly file and serve a motion for substitution addressing whether the cause of action survived the defendant's death or was extinguished, but failed to submit evidence to show that the defendant's widow was a proper party and failed to submit evidence to show the claim was not extinguished and when there is no administrator or legal representative of the estate and no evidence showing inheritable interests or even suggesting there was property to distribute, a substitution of the deceased's relatives under Rule 25(a)(1) will be denied. George v. Johnithan, 15 FSM R. 455, 457 (Kos. S. Ct. Tr. 2007).

When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Hauk v. Emilio, 15 FSM R. 476, 478 (Chk. 2008).

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

Since FSM Civil Rule 25(d)(1) provides that if a public officer is a party to a proceeding, and he ceases to hold office, the name of his successor is automatically substituted as a party, when the filed complaint named a state governor as a party and the current governor is a different person, the caption will be changed to reflect the substitution. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 646 (Pon. 2008).

Since the FSM drew from United States counterparts both the civil rights statute the plaintiffs are suing under and the Rules of Civil Procedure, including Rule 25(d), it is appropriate to consult U.S. sources in determining whether the plaintiffs may sue someone in his former official capacity or whether Rule 25(d)(1)

automatically substituted the current office-holder in his stead. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

When a defendant has been sued in his official and personal capacities and ceases to hold office, his successor in office is automatically substituted for the defendant in his official capacity, but the defendant will remain as a party-defendant in his personal capacity and may potentially be held personally liable. Herman v. Bisalen, 16 FSM R. 293, 296-97 (Chk. 2009).

A successor in the Governor's office will be automatically substituted as a party for the former Governor. Marsolo v. Esa, 18 FSM R. 59, 62 n.1 (Chk. 2011).

Substitution of parties due to a party's death is governed by Civil Procedure Rule 25(a), which clearly contemplates appointment of legal representatives, such as an executor or an administrator. Relatives of the deceased who are not legal representatives cannot be substituted as parties. An administrator's identity is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). FSM Dev. Bank v. Paul, 18 FSM R. 149, 150-51 (Pon. 2012).

The court cannot substitute unknown and unnamed persons as parties defendant. A motion for substitution is deficient when it does not name a proper party to be substituted since the court and the other parties must know the names and identities of the parties to be substituted so that they may be properly served. FSM Dev. Bank v. Paul, 18 FSM R. 149, 151 (Pon. 2012).

Since proceeding against unknown defendants is not authorized by the FSM Rules of Civil Procedure, a case cannot proceed against unknown heirs or devisees. Therefore a motion to substitute "the heirs and devisees" of a deceased party will be denied. FSM Dev. Bank v. Paul, 18 FSM R. 149, 151 (Pon. 2012).

Since an action will be dismissed as to a deceased party if no motion for substitution is made within 90 days 1after the suggestion of death, when the court has not received a motion for substitution, and the plaintiffs do not appear to intend to file such a motion, the court will dismiss the deceased party from the case and order that the caption in future filings reflect such dismissal. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

When a defendant was sued both personally and in his official capacity as Director of Public Safety but now is no longer director, the current director is automatically substituted as a defendant in his official capacity, but the original defendant remains a defendant in his personal capacity. Alexander v. Pohnpei, 18 FSM R. 392, 396 n.1 (Pon. 2012).

Since all civil actions should be prosecuted by the real party in interest, when the real party in interest is no longer a minor, he will be substituted as the sole plaintiff in the place of his mother who had appeared as plaintiff as his next friend. Tarauo v. Arsenal, 18 FSM R. 441, 442 (Chk. 2012).

The proper party for substitution for a deceased party is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). An administrator's identity cannot be presumed; there must be some designation by a court. In re Estate of Edmond, 19 FSM R. 59, 60-61 (Kos. 2013).

By operation of Civil Procedure Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the officer's successor is automatically substituted as a party. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 n.1 (Pon. 2015).

Whether FSM Development Bank officials can be considered public officers for the purpose of Rule 25(d)(1) is neither a controlling issue of law nor a matter of first impression. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

Since Rule 25(d)(1) makes the substitution of public officers automatic, it does not require a motion and the grant of the motion for the substitution to take effect. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

A major reason for automatic substitution of public officers in their official capacity or, alternatively, for the use of the officer's official title rather than the officer's name, is that the holders of public office change frequently, and the substitution of one public officer for another would, at best, be a time-consuming formality. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 n.3 (Pon. 2016).

Under Civil Rule 25(a)(1), when a party dies, the court may order substitution of the parties, but once the death is suggested on the record, a ninety-day time frame is triggered to file the substitution motion and if this deadline is not met, the action will be dismissed as to the deceased party. Johnson v. Rosario, 21 FSM R. 7, 9 (Pon. 2016).

When the counsel for the plaintiff, who had passed away on May 25, 2013, was put on notice, on July 27, 2016, that if further steps to prosecute the case were not taken, dismissal was warranted for failure to prosecute; and when counsel, on August 26, 2016, moved for a 330-day extension to file and complete probate but no probate action was initiated, the ninety-day window for moving to substitute has long since closed. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

The onus for failing to meet the Civil Rule 25(a)(1) timing requirement falls squarely upon the movant. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

– Pleadings

FSM Civil Rule 3 confirms that the filing of a complaint is the essential first step for instituting civil litigation. The Rules of Civil Procedure specify no other method for a party to obtain judicial action from the court in civil litigation. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 500 (Pon. 1984).

When issues which were not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Edwin v. Kosrae, 4 FSM R. 292, 301 (Kos. S. Ct. Tr. 1990).

The pleading requirements of FSM Civil Rule 8(a) are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993).

The rules allow for notice pleading and require a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled. The pleadings must give the opposing party fair notice of the nature and grounds for the claim, and a general indication of the type of litigation involved. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by

the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM R. 554, 558 (Chk. S. Ct. App. 1994).

The rules require only notice pleading, and are flexible and informal rather than technical. The complaint need only be a short and plain statement of the claim and give the defendant fair notice of the factual wrong on the basis of the facts asserted. The legal theory advanced, if one is advanced, need not be correct. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113-14 (Chk. 1995).

A complaint should not be dismissed and a party precluded from relief because a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

Where a plaintiff in response to interrogatories does not list "funding" as one of the defendant's acts constituting a violation and plaintiffs' amended pretrial statement does not state that "funding" is a ground for liability, plaintiffs' allegation in their complaint that "funding" gave rise to liability will be deemed abandoned. Damarlane v. United States, 7 FSM R. 167, 169 (Pon. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

Issues not specifically raised in pleading may be tried by parties' implied consent. Davis v. Kutta, 7 FSM R. 536, 543 (Chk. 1996).

Issues not raised in the pleadings may be tried by consent of the parties. Implied consent may be demonstrated by a party's failure to object to evidence directly pertaining to the issue or by the party against whom the issue is asserted being the first to raise the issue and submit evidence on it. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

Issues raised in pleadings are not waived by a party's failure to discuss them in briefs. Senda v. Semes, 8 FSM R. 484, 494 n.6 (Pon. 1998).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. With respect to affirmative matter under Rule 8(c), counsel should come to trial knowing what affirmative defenses or "any other matter constituting an avoidance" the facts support, and present evidence accordingly. Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

Abstention is not a defense to a lawsuit in the sense used in Rule 12(b). In abstention practice, the movant is asking the court to exercise its discretion to abstain from hearing the action for the express purpose that another court may hear the lawsuit. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A motion to stay most closely analogizes to a motion to abstain, and such a motion is not a pre-answer motion, but a pre-trial motion. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

An abstention motion before the FSM Supreme Court should proceed as a post-answer motion, and not a motion in lieu of answer under Rule 12(b) of the FSM Civil Procedure Rules. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

General denials are disfavored, but when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. Marar v. Chuuk, 9 FSM R. 313, 314 n.1 (Chk. 2000).

The term "at issue" has been defined as, whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

If a defendant has never been properly served with a complaint and summons, that defendant cannot possibly file a late or untimely answer because the twenty-day time to answer allowed in Civil Procedure Rule 12(a), or the thirty-day time to answer allowed in 4 F.S.M.C. 204(3), does not start running until valid service of the complaint and summons has been made. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

In the complaint the title of the action shall include the names of all the parties. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Pleadings are defined as the complaint, answer, reply to a counterclaim, answer to a cross-claim, third-party complaint, and third-party answer. No other pleadings are allowed, except that the court may order a reply to an answer or a third-party complaint. No other paper will be considered a pleading and a motion in any form cannot stand as a pleading. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

The FSM Supreme Court's practice has been to consider any written response from an unrepresented defendant as an answer or a pleading. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

The phrase "et al." or such other similar indication is not permitted in the caption of a complaint although it may be used on later filings. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

Because technical defects in a caption can always be amended, the failure to name a party as a defendant in the caption does not mean the action cannot be maintained against him if the complaint makes a number of explicit references to him and he was served. Moses v. Oyang Corp., 10 FSM R. 210, 212 (Chk. 2001).

All parties must be named in the complaint. The only exception the rules allow to this requirement that

parties be named, rather than just described, is that a public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

Replacing an unnamed or "John Doe" party with a named party in effect constitutes a change in the party sued and can only be accomplished when the specifications of Rule 15(c) are met. Thus the presence, or addition, of described, but unnamed defendants would serve no purpose. Moses v. Oyang Corp., 10 FSM R. 210, 213 (Chk. 2001).

Defenses cannot be raised for the first time in a written closing argument when they were not raised in the answer and were not tried by express or implied consent of the parties. Defenses not raised in a responsive pleading are waived. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Until a default is entered by the court clerk, a party still may appear in the action and the clerk must accept for filing defendant's pleadings or motions, even if filed outside the times prescribed by the rules. Once a defendant's pleadings or motions are filed, it is too late for the entry of default, and the defendant is entitled to proceed with its defense. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

When non-pleading issues are tried by the parties' consent, those issues shall be treated as raised in the pleadings. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM R. 551, 552 (Kos. S. Ct. Tr. 2002).

Rule 8(a) provides that a pleading shall assert a short and plain statement of the claim showing that the pleader is entitled to relief. Under this rule, the claimant need not set forth any legal theory justifying the relief sought on the facts alleged, but the rule does require sufficient factual averments to show that the claimant may be entitled to some relief. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

The plaintiffs' factual averments and the claims resting on them are dispositive, not the legal theories assigned to the claims. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

A plaintiffs' attorney's failure to properly plead their claims is not a sufficient justification to prevent the plaintiffs from being able to bring their claims at all because a complaint should not be dismissed and a party precluded from relief when a plaintiff's lawyer has misconceived the proper legal theory of the claim. If the complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When a case has been properly removed from a municipal court where no complaint was filed, the FSM Supreme Court will require the plaintiff to file a complaint and allow the case to proceed therefrom. Damarlane v. Sato Repair Shop, 11 FSM R. 343, 344 (Pon. 2003).

Our rules of pleading are informal and flexible, and a pleading need only set forth a short and plain statement of the wrong alleged based on the facts asserted. Even if a legal theory is advanced, it does not have to be the correct one and a claimant does not have to set out in detail the facts on which the claim for relief is based, but must provide a statement sufficient to put the opposing party on notice of the claim. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

A defense perfunctorily raised in an answer but never explained, documented, or developed through argument and citation to the law, ultimately carries little or no weight. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

When a defendant's motion to dismiss has been denied, he has 10 days within which to file his answer to the amended complaint. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

When the defendants' answer imprecisely attempts to incorporate by reference in its response to the complaint's paragraphs 15-18 that incorporate all of the complaint's preceding paragraphs by reference, given the answer's denials of those preceding paragraphs, the facts alleged in the complaint's paragraphs 15-18 will be deemed denied. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

Pleadings must contain a short and plain statement of the claim showing that the pleader is entitled to relief. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Pleading practice in the FSM is notice pleading. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

Although FSM's notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims, these procedures are neither available nor utilized in obtaining a default judgment when the defendant has never appeared. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

The contents of a letter that was not attached to or served with the original complaint cannot be considered as incorporated by reference in the pleading. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A complaint's prayer for "such other and further relief as may be deemed just and proper" cannot serve to incorporate an unpled prejudgment interest claim and circumvent Rule 54(c)'s clear command that a default judgment must not be different in kind from or exceed in amount that prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A court, in entering a default judgment, cannot take a blind leap of faith that a defendant would know, or should know, that the lawsuit was also seeking unpled prejudgment interest. Likewise, a defendant, in deciding whether to defend a case filed against him or to do nothing and let a default judgment be entered against him, ought to be able to rely on the demand for judgment prayed for in the complaint and the complaint's contents to determine what his liability will be if a default judgment is entered. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

Motions to dismiss are not pleadings and oppositions to such motions are not responsive pleadings. Sipos v. Crabtree, 13 FSM R. 355, 360 (Pon. 2005).

If a detrimental reliance cause of action was pled and tried, or tried by the parties' express or implied consent, the plaintiff is entitled to have the trial court rule on this cause of action when the plaintiff's judgment is reversed for the statutory claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

If a complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether the complaint asks for the proper relief, the complaint is sufficient, and since, (except as to a party against whom a judgment is entered by default), every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, the trial court should consider whether to find liability and award damages on a cause of action not specifically named in the complaint but for which evidence was presented at trial. Pohnpei v. AHPW,

Inc., 14 FSM R. 1, 26 (App. 2006).

When two causes of action were not pled in the complaint and the plaintiff did not seek any amendment of the complaint to add these causes of action prior to trial and no motion made after trial to amend the pleadings to conform to these causes of action, the court may not base its decision on a theory of recovery that was not raised by the pleading nor tried by consent with subsequent amendment to the pleading and since the parties' trial stipulations agreed that this case presented a cause of action for negligence, the other causes of action will not be considered. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Although the complaint is not artfully drafted, the court will not dismiss the claims made under a count headed "due process" simply because the count is "overstuffed" since notice pleading requires only a short and plain statement of the claim and fair notice of the factual wrong on the basis of the facts asserted. A plaintiff need not even advance a legal theory. Nor must the theory, if advanced, be correct. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When the plaintiff asserts a tort claim for assault and battery by the police officers, although the claim should have been set forth independently, the facts alleged in the complaint were sufficient to place the defendants on notice of an assault and battery claim. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

The purpose of including a prayer for relief in a complaint is to give notice to the court and to the parties of the claims being presented and the relief being sought. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

A pleading's purpose is simply to give the opposing party notice of the essence of its claim with sufficient clarity to enable it to answer, that is, fair notice of factual wrong openly stated on the basis of facts asserted. The rules are flexible and informal rather than technical, and only require notice pleading. The pleading need only be a short and plain statement of the claim and give the opposing party fair notice of the factual wrong on the basis of the facts asserted. The legal theory advanced, if one is advanced, need not be correct. Thus, if a cognizable cause of action can be discerned from the facts as pled, the pleading party has complied with Civil Procedure Rule 8(a)'s notice pleading requirement. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

When motions to dismiss, to strike, and to require a more definite statement are denied, the movant has ten days after service of the order to serve its answer to the counts involved. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

General denials are disfavored, but when the pleader does intend to controvert all of the complaint's averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

There is no such pleading as a "complaint for summary judgment." A pleading thus entitled is therefore a complaint, since a filing is what it is regardless of what the party who filed it chooses to call it. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

A defendant who is not an attorney admitted to practice before the court, may not answer on anyone's behalf but his own, and his answer will be stricken to the extent that it purports to be on other defendants' behalf. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

An answer that denies all of a complaint's factual allegations is an answer in the nature of a general

denial. General denials, while disfavored, are permissible when proper, but are subject to the obligations of honesty set forth in Rule 11. Counsel are cautioned that pleadings that deny facts known by the pleader to be true subject counsel to possible sanctions under Rule 11. Albert v. George, 15 FSM R. 574, 577 n.1 (App. 2008).

The rules require only notice pleading, and are flexible and informal rather than technical. The complaint need only be a short and plain statement of the claim and give the defendant fair notice of the factual wrong on the basis of the facts asserted and the legal theory advanced, if one is advanced, need not be correct. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

A proposed pleading must set forth claims in numbered paragraphs the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, as required by Civil Rule 10(b); otherwise the pleading's averments will be "vague" and "ambiguous" and not sufficiently "simple, concise, and direct" to reasonably require a responsive pleading. Although no technical form of pleadings is required, the complaint must have a caption. Kubo v. Ezra, 16 FSM R. 88, 90-91 (Chk. S. Ct. Tr. 2008).

Rule 18 permits the joinder in a single action of as many claims, legal, equitable, or maritime, as the party has against an opposing party even if those claims are unrelated. But when the claims that the plaintiffs seek to add are not against any opposing party, but are against persons the plaintiffs seek to add as new defendants eight years after the complaint they seek to amend was filed and five years after judgment was entered on that complaint, the joinder will not granted. Herman v. Municipality of Patta, 16 FSM R. 167, 171-72 (Chk. 2008).

When the defendants' default was entered before they filed their answer and when the default was not subsequently set aside under Civil Procedure Rule 55(c), the court cannot take cognizance of the later-filed answer. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 224 (Chk. 2008).

The amount of damages a plaintiff requests in the complaint's ad damnum clause does not limit the amount which a plaintiff may be awarded, even without an amendment to the ad damnum clause. The one exception is that a default judgment cannot exceed in amount that prayed for in the demand for judgment, although, in a default judgment, the court may determine that the damages are less than the amount prayed for. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

An ad damnum clause is a party's statement at the end of a pleading of the monetary amount claimed due to the party as damages by virtue of the facts stated. Nakamura v. Mori, 16 FSM R. 262, 267 n.2 (Chk. 2009).

Although, for punitive damages to be awarded, there must be evidence of gross negligence, it is not necessary for such proof to be set forth in the complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

The Civil Procedure Rules authorize only seven pleadings: 1) a complaint; 2) an answer; 3) a reply to a counterclaim denominated as such; 4) an answer to a cross-claim, if the answer contains a cross-claim; 5) a third-party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and 6) a third-party answer, if a third-party complaint is served; and 7) no other pleading is allowed except that the court may order a reply to an answer or a third-party answer. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since

specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

In Kosrae small claims, a docket card is kept showing the pleadings, actions of the court, payments, or other reports and this docket card ordinarily constitutes the entire record. The plaintiff may state the nature and amount of the claim to the clerk who notes this on the docket card and the plaintiff signs this which, under the Small Claims Rules, constitutes the complaint. No other written pleading is required unless the court orders otherwise. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

In an action filed as a small claim case, the plaintiff is only required to state the nature and amount of his claim to the clerk who then reduces it to writing very briefly on the docket card under the date the statement is made and then it is signed. The docket card signed by the plaintiff constitutes the complaint and no other written pleading is required. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

There is no authority to proceed against unknown persons in the absence of a statute or rule, and since the FSM has no rule or statute permitting the use of fictitious names to designate defendants, the naming of "John Doe" defendants in *in personam* actions is not a pleading practice recognized in the FSM. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

A contention that a trial court could not make as a ground for relief a claim that was not in the plaintiff's complaint is incorrect because, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Berman v. Pohnpei, 17 FSM R. 360, 373 n.5 (App. 2011).

A plaintiff is not precluded from relief just because the party's lawyer has misconceived the proper legal theory of the claim since a plaintiff need not even advance a legal theory. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

Shareholder derivative actions have pleading requirements beyond those in Civil Rule 8(a) since under Rule 23.1, the special derivative action pleading requirements include allegations about the special prerequisites for such actions. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A complaint in a shareholder action must be verified, and must include statements to the effect that the plaintiff was shareholder at the time of the transaction of which he complains or that his shares thereafter devolved on him by operation of law, that the action is not a collusive one to confer jurisdiction, and that he has undertaken efforts to have his grievances redressed by the corporation's directors or shareholders and the reasons why he failed to obtain that relief. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

If a derivative action plaintiff has not undertaken action to have his grievances redressed then he must allege the reasons for not making the effort. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

Since a plaintiff shareholder is presumed to be an adequate representative and since the burden is on the defendant to show that the plaintiff is inadequate, the plaintiff in a derivative action does not need to allege he is an adequate representative. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action plaintiff must allege that, at the time of the transactions complained of, he owned shares in the corporation or that the shares thereafter devolved on him by the operation of law. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A derivative action complaint, or the part of the complaint that alleges a derivative action, must be verified, that is, confirmed or substantiated by oath or affidavit whereby the truth of the statements in the complaint is sworn to. Mori v. Hasiguchi, 17 FSM R. 630, 639 & n.2 (Chk. 2011).

A verification is used as a conclusion for all pleadings that are required to be sworn. Mori v. Hasiguchi, 17 FSM R. 630, 639 n.2 (Chk. 2011).

The purpose of Rule 23.1's verification requirement is to ensure that the court will not be used for "strike suits" and that the plaintiff has investigated the charges and found them to be of substance. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action complaint does not have to be dismissed for noncompliance with the verification requirement when the court can require the plaintiff to verify it by filing an affidavit within a reasonable time, and even then, if the plaintiff fails to take advantage of the court's invitation to correct the deficiency, the dismissal should not be with prejudice inasmuch as the merits of the case have not been adjudicated. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action must allege with particularity what efforts the plaintiff has made to obtain relief from the corporation's directors. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

In a derivative action, it must appear from the complaint that plaintiff acted in good faith in seeking corporate action and exercised diligence in exhausting his remedies within the corporation. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

As is true of pleading demand and refusal, what must be shown in the complaint to justify excusing compliance with the demand requirement is a matter of judicial discretion. At a minimum, the plaintiff must plead facts explaining the lack of a demand – it is not enough for plaintiff to state in conclusory terms that he made no demand because it would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

A motion to dismiss derivative action allegations will be granted when the complaint has not alleged and shown that the plaintiff made a proper demand for redress and was refused or alleged and shown that such a demand would have been futile. Mori v. Hasiguchi, 17 FSM R. 630, 640-41 (Chk. 2011).

Pleadings are limited to a complaint, an answer, counterclaims, a reply to a counterclaim, a cross-claim, an answer to a cross-claim, a third-party complaint, and a third-party answer and no other pleading will be allowed, except that the court may order a reply to an answer or a third-party answer. Berman v. Pohnpei, 18 FSM R. 67, 70 (Pon. 2011).

The FSM requires only notice pleading – a complaint need only be a short and plain statement of the claim and give a defendant fair notice of the factual wrong on the basis of the facts asserted. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

An FSM Civil Rule 12(b)(6) motion to dismiss may, at the pleader's option, be made either as a motion before the answer or as part of the answer. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 99 (Pon. 2011).

When the plaintiff alleges that the state took his property without just compensation, but he only cites to the Chuuk Constitution provision barring Chuuk from taking property without just compensation and does not allege that Chuuk's alleged acts violated any FSM Constitutional provision, his complaint does not appear to allege claims arising under national law and thus does not show FSM Supreme Court jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

Although pleading requirements are interpreted liberally, it is the plaintiff's responsibility to see that his complaint states the grounds of jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A defendant, who has asserted in its answer the lack of personal jurisdiction over it as a defense, has preserved that defense for determination before trial and it may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 287-88 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

General denials are disfavored, but when a pleader does intend to controvert all the complaint's averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations of honesty in pleading set forth in Rule 11. An answer consisting of a general denial will be available to a party acting in good faith only in the most exceptional cases. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

When, in their answers, all of the appearing defendants asserted the plaintiffs' failure to join indispensable parties as a defense, they preserved that Rule 12(7) defense for determination before trial. Moreover, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that, by rule, is specifically preserved and may be raised as late in the proceedings as at the trial on the merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 289 (Yap 2012).

A party will appeared to have preserved the defense of lack of personal jurisdiction for determination by motion before trial when the answer denies the plaintiffs' averment that the party was "subject to *in personam* jurisdiction in this Court." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

Since a party may state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds, a party may plead in the alternative, and the inconsistent pleadings are not a ground to deny amendment to a complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

The failure to deny an averment in a pleading constitutes an admission only for averments in a pleading to which a responsive pleading is required. A motion to dismiss is not a pleading. Perman v. Ehsa, 18 FSM R. 452, 454-55 (Pon. 2012).

An answer is not a pleading to which a responsive pleading is required. The pleadings to which a responsive pleading is required are complaints, counterclaims and cross-claims, and a court may, on extremely rare occasions, order a reply. Perman v. Ehsa, 18 FSM R. 452, 455 n.2 (Pon. 2012).

Since Rule 8(d) provides that averments in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided, averments in an answer would, by rule, be considered

denied or avoided. Perman v. Ehsa, 18 FSM R. 452, 455 n.2 (Pon. 2012).

The FSM is a notice pleading as opposed to a code pleading jurisdiction (in a code pleading jurisdictions, certain forms are to be followed or the case gets dismissed). Peniknos v. Nakasone, 18 FSM R. 470, 488 & n.10 (Pon. 2012).

On summary judgment, a plaintiff cannot rely on a notice pleading requirement which is generally used for the complaint or the initiation of a claim under the civil procedure rules. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

The FSM pleading rules are flexible and informal rather than technical and thus require only notice pleading. FSM Civil Rule 8(a)'s pleading requirements are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with Rule 8(a). But just because a pleading is sufficient to withstand a Rule 12(b) motion to dismiss for failure to state a claim does not mean that it meets the standard to withstand a Rule 56(b) summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

Complaints in Admiralty Rule B, C, and D actions must be verified upon oath or solemn affirmation by a party or by an authorized officer of a corporate party but complaints in other in personam admiralty actions against natural and juridical persons do not have to be verified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

When a complaint is against an individual d/b/a as a corporation, despite any indications to the contrary, there are, as a matter of law, two defendants in the trial court case and two cross-appellants in this appeal – the individual and the corporation. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

As a general rule, pro se parties are allowed greater leeway and their pleadings are construed more liberally because of their lack of legal training. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

Regardless of what a litigant designates something in the litigant's pleadings, it must be treated as what it really is. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 n.6 (App. 2014).

The term "at issue" is defined as whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

Although general denials are disfavored, a pleader may make a general denial subject to the obligations of honesty in pleading set forth in Rule 11. An answer consisting of a general denial is available to a party acting in good faith only in the most exceptional cases. FSM v. Muty, 19 FSM R. 453, 457-58 n.2 (Chk. 2014).

Pleadings do not have to be consistent. A party may plead in the alternative. FSM v. Muty, 19 FSM R. 453, 461 (Chk. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

The term "at issue" means that whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at issue. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

A pleading shall assert a short and plain statement of the claim showing that the pleader is entitled to relief. The claimant need not set forth any legal theory justifying the relief sought on the facts alleged, but sufficient factual averments to show that the claimant may be entitled to some relief are required. The plaintiffs' factual averments and the claims resting upon them are dispositive, not the legal theories assigned to them. Solomon v. FSM, 20 FSM R. 396, 400 (Pon. 2016).

A complaint's purpose is simply to give the defendant notice of the essence of the plaintiff's claim with sufficient clarity to enable the defendant to answer, that is, fair notice of factual wrong openly stated on the basis of the facts asserted. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

Absent sufficient factual affirmations to buttress the relevant claim, coupled with the plaintiff's failure to denote what portion of the relevant agency decision was flawed, the defendants cannot be expected to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

It is not enough to simply cite a set of regulations and claim the alleged acts ran afoul of this compendium. A mere conclusion that these regulations were breached, which neglects to supply the necessary factual allegations in support thereof, is inadequate, and when the factual averments were solely applicable to one defendant and hence do not support the other cause of action, more specificity is required and absent some reasonable facsimile of particularity, the other cause of action fails to notify the defendants of the alleged infraction; thereby impeding their ability to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

The legal theory advanced in a complaint, if one is advanced, need not be correct. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. Solomon v. FSM, 20 FSM R. 396, 403-04 (Pon. 2016).

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Because it is the plaintiffs who invoke the court's jurisdiction, it is the plaintiffs' burden to prove that standing exists. Therefore, when the defendants challenge standing in a motion to dismiss or as an affirmative defense, the plaintiffs' complaint must contain facts that, if true, would be sufficient to establish that standing exists. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged, but when a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

– Pleadings – Affirmative Defenses

Pure conjecture is not the appropriate standard for the assertion of an affirmative defense. An affirmative defense may be pled only when to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the defense is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Lavides v. Weilbacher, 7 FSM R. 400, 405 (Pon. 1996).

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

Although not listed in Civil Rule 8(c), failure to exhaust administrative remedies is an affirmative defense. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 618 (App. 1996).

Counsel does not risk waiver of affirmative defenses if she does not list them immediately because additional time may obtained in which to respond to a complaint, or after an answer is filed the answer may be amended within twenty days without leave of court. If pretrial investigation and discovery uncovers an unanticipated defense, a defendant can move to amend the pleading, for which leave will be freely given when justice so requires. Finally, the pleadings do not necessarily bind the parties because issues not raised in the pleadings may be tried by the paries' express or implied consent. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

Generally, affirmative defenses that are not pled are waived. Consequently, a pleader normally will not be penalized for exercising caution when he sets up affirmative matter that technically may not be an affirmative defense but nonetheless might fall within the residuary clause of Rule 8(c) of the Rules of Civil Procedure. Senda v. Semes, 8 FSM R. 484, 493 (Pon. 1998).

When an affirmative defense has not been pled but is raised after trial has begun, it is not waived when opposing counsel consents to its being raised. Senda v. Semes, 8 FSM R. 484, 493 (Pon. 1998).

Affirmative defenses that in each instance are tied to specific factual allegations do not present an instance of blanket pleading of frivolous affirmative defenses without regard to the facts of the case. Senda v. Semes, 8 FSM R. 484, 493-94 (Pon. 1998).

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. With respect to affirmative matter under Rule 8(c), counsel should come to trial knowing what affirmative defenses or "any other matter constituting an avoidance" the facts support, and present evidence accordingly. Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Normally a defense that is not pled is waived, but an affirmative defense is not waived when it is raised after trial has begun, and opposing counsel consents to its being raised. Senda v. Semes, 8 FSM R. 484, 499-500 (Pon. 1998).

Affirmative defenses that the court has ruled against earlier and affirmative defenses for which no evidence was presented at trial must fail. Senda v. Semes, 8 FSM R. 484, 501-02 (Pon. 1998).

When a party has mistakenly designated a counterclaim as a defense, the court, on such terms as justice requires, shall treat the pleading as if there had been a proper designation. Senda v. Semes, 8 FSM R. 484, 503 (Pon. 1998).

Every defense, in law or fact, to a claim for relief in any pleading must be asserted in the responsive pleading thereto except for the defenses list in Rule 12(b), which may be raised by motion made before pleading. If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, or to assert at trial any counterclaims or crossclaims, or third party claims, has waived and lost his right to assert at trial affirmative defenses and to assert any counterclaims or crossclaims, or third party claims. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

The statute of limitations is an affirmative defense which must be raised in the defendant's answer, and when it has not been, the defendant has waived its statute of limitations defense. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth

affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

Failure to exhaust administrative remedies is an affirmative defense. Thus, the plaintiff is not required to plead and prove that it has exhausted its remedies. Rather, the burden to plead and prove the defense falls upon the defendant. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

Res judicata is an affirmative defense. An affirmative defense generally must be pled by the defendant or it is waived. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

The statute of limitations is an affirmative defense which must be raised in a responsive pleading, such as an answer. It is an expressly stated affirmative defense to an action under Civil Rule 8(c), and as such, it is waived if it is not pled, or if it is not raised in a Rule 12(b)(6) motion for failure to state a claim. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, has waived and lost his right to assert affirmative defenses. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the defendant has waived any statute of limitations defense, the limitations statute will not, as a matter of law, bar a summary judgment for the plaintiff. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547(Chk. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

The affirmative defense of statute of limitations is to be raised affirmatively in the responsive pleading; it is not a defense that may be brought by a Rule 12(b) motion. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

Failure to exhaust administrative remedies is an affirmative defense which a defendant must plead and prove. But when a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

The right to insert additional affirmative defenses in the indefinite future when additional information is revealed is not itself an affirmative defense. It is only an assertion that the party might want to plead an additional, currently unknown affirmative defense at some unknown later date. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

Rule 8(c) requires that affirmative defenses be raised in a responsive pleading (an answer) if not raised in a pre-answer motion. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495-96 (Chk. 2013).

When a party has already filed an answer, that answer should contain all of the party's affirmative defenses. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review are both affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Failure to exhaust administrative remedies is an affirmative defense that ordinarily must be pled or it is deemed waived. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The statute of limitations is an affirmative defense which, if not pled, is waived. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.2 (Pon. 2013).

The FSM Secretary of Finance cannot raise any defenses the Chuuk Governor, who is not a party to the litigation, may have; she can only defend by saying that when the proper paperwork is presented, Finance is obligated to pay – that FSM Finance is only the money's custodian. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

– Pleadings – Amendment

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109, 112-13 (Pon. 1993).

A party may not amend its pleadings after trial to include another issue unless it was tried by the express or implied consent of the parties. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 120 (Pon. 1993).

When an issue not raised in the pleadings is raised at trial without objection by either party and evidence is admitted on the matter, the issue is to be considered tried by implied consent per FSM Civil Rule 15(b). Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

Pleadings may be amended as a matter of right anytime before a responsive pleading is served, with written consent of the adverse party, or by order of court, which should be liberally granted. Once the pleading is complete and all amendments have been filed the matters raised by the pleadings normally form the issues to be determined at trial. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and any party may make a motion to amended the pleadings to conform to the evidence and issues tried by such consent. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

If an unpled theory of recovery is fully tried by consent of the parties, the trial court may base its decision on that theory and may deem the pleadings amended accordingly, even though the theory was not set forth in the pleading or the pretrial order. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

When a court has granted leave to file an amended complaint attached to movant's motion to amend, and the movant later files a different amended complaint, no leave has been granted for that complaint and its filing is improper. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 15 (App. 1995).

An amended pleading, which is complete in itself and which does not refer to or adopt a former pleading as a part of it, supersedes the former pleading. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 15 (App. 1995).

A court has discretion to allow an amendment to the pleadings. In the case of a post-trial motion to amend, the court must find that the unpled theory or issue has been tried by the express or implied consent of the parties. If it has not, then it is reversible error for the court to base its judgment on the unpled theory. Alafonso v. Sarep, 7 FSM R. 288, 290 (Chk. S. Ct. Tr. 1995).

A complaint cannot be amended to include allegations already ruled against on summary judgment. Damarlane v. United States, 7 FSM R. 350, 353 (Pon. 1995).

A complaint cannot be amended after trial when the movants make no showing at all what it was that was tried by express or implied consent of the parties that would justify the amendment. Damarlane v. United States, 7 FSM R. 350, 356 (Pon. 1995).

Counsel does not risk waiver of affirmative defenses if she does not list them immediately because additional time may obtained in which to respond to a complaint, or after an answer is filed the answer may be amended within twenty days without leave of court. If pretrial investigation and discovery uncovers an unanticipated defense, a defendant can move to amend the pleading, for which leave will be freely given when justice so requires. Finally, the pleadings do not necessarily bind the parties because issues not raised in the pleadings may be tried by the paries' express or implied consent. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

When a party requests leave of the court to amend pleadings, leave shall be freely given. In addition, such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made upon motion of any party at any time. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

Although a court should exercise its discretion liberally to allow amended pleadings, a motion to amend a complaint may be denied if it is futile. One reason a motion to amend would be futile is if the claims sought to be added are barred by the relevant statute of limitations. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

An amended pleading in a personal injury suit filed after the two year statute of limitations ran out would be futile unless it can be related back to an earlier date. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

A mistake of identity as used in Rule 15(c) applies to misnomers, incorrect names, and mistakes concerning which official body is the proper defendant, but a mistake of legal judgment concerning who is responsible for the tort, where the plaintiff was fully aware of the identities of the defendant and potential defendants, is not the type of mistake of identity which can be corrected under Rule 15(c), with the amended pleading to relate back. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

When the plaintiffs were fully aware of the identity of the third-party defendant at least since the third-party complaint was filed, but do not seek to amend their complaint to proceed against that party until after the statute of limitations has run, they made no mistake of identity correctable under Rule 15(c) and the motion to amend is properly denied because the amendment is futile. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 (App. 1999).

A plaintiff may amend a complaint once without leave of court anytime before a responsive pleading is filed and a Rule 12 motion to dismiss is not a responsive pleading. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 410 (App. 2000).

Generally, leave to amend a complaint ought to be freely given. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend

should, as the rules require, be "freely given." Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

It is an abuse of discretion for a trial court to deny leave to amend pleadings without stating its reasons on the record because outright refusal to grant leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

It is not an abuse of discretion to deny a motion to amend when the amendment would not cure a complaint's defects, and when the reasons are readily apparent that the amendment will obviously not cure a defective complaint, a trial court does not abuse its discretion by denying the amendment without declared reasons. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Although when the reasons are readily apparent it is not a per se abuse of discretion to omit them, the better practice is for the trial court to state on the record its reasons for denying a motion to amend. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Although a court should exercise its discretion liberally to allow amended pleadings, when a proposed amendment to a complaint would be futile because it still would not state a claim upon which the FSM Supreme Court could grant relief, the court may deny the motion to amend. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 (App. 2000).

Because leave to amend a pleading shall be freely given when justice so requires, a plaintiff may be granted leave to amend its complaint to present its argument that the statute of limitations may have been tolled based upon its request that the parties submit their dispute to arbitration when the defendant has not presented any arguments that would show any injustice if the plaintiff amended its complaint. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

A caption may be changed to reflect the defendants' name corrections in the plaintiff's motion to amend complaint, and to reflect the plaintiff's request in the opening statement at trial, that the caption be altered to conform to the pleadings. Estate of Mori v. Chuuk, 10 FSM R. 6, 9 (Chk. 2001).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

Errors in a case's caption can always be amended to correct technical defects. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

Dismissal of John Doe defendants does not prohibit the plaintiff from seeking to amend its complaint if it does ascertain other parties should be named defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

The court will grant defendants leave to amend their responsive pleadings when one defendant has not stated in short and plain terms her defenses to each claim asserted and has not admitted nor denied the plaintiffs' averments rely and the other defendant had not obtained leave to amend his answer, so the court could not permit him to avail himself of the affirmative defenses filed later. Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 440 (Pon. 2001).

A pleading may state as a counterclaim any claim against an opposing party not arising out of the

transaction or occurrence that is the subject matter of the opposing party's claim and a pleading may be amended with leave of court to include a counterclaim when the counterclaim either matured or was acquired by the pleader after serving his pleading or when a pleader failed to set it up through oversight, inadvertence, or excusable neglect, or when justice requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

When a defendant seeks to amend its answer to include a permissive counterclaim and the plaintiff opposes on the basis that the statute of limitations has run on the proposed counterclaim, and when considerations of judicial economy weigh in favor of granting defendant's motion for leave to amend, the court will not address the issue of statute of limitations on the proposed counterclaim because this is a defense that could be the basis for a motion to dismiss the counterclaim, rather than a basis to oppose defendant's motion to amend. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

A party may seek leave of court to amend a pleading to include an omitted counterclaim, and leave will be freely given when justice so requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

After a pleading has been responded to, leave shall be freely given to amend a pleading when justice so requires. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230-31 (Pon. 2002).

When at a late stage in the litigation, the plaintiffs can only allege on no more concrete basis than mere information and belief that an unseen contract may make non-parties liable for unpaid-for building materials, it is insufficient at this point to state an unjust enrichment or third-party beneficiary claim, and the motion to add these non-parties and claims will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

When the loan agreement was produced in discovery seven months before the motion to amend was filed, but the motion was brought within the time permitted for filing pretrial motions; when the opponent bank was also responsible for considerable delays through its own resistance to discovery; and when the bank cannot claim surprise, since the loan agreement is its own document, a motion to amend the complaint to add a third-party beneficiary claim against the bank based on the loan agreement will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

When the applicable statute of limitations is six years and the construction agreement between the Permans and Felix is dated January 10, 1997 and other operative events occurred in September and October 1997, a July 23, 2002 motion to amend the complaint to add Felix and claims against him is not time barred. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

A strong presumption exists under FSM law for deferring land matters to local land authorities, along with federalism principles and concerns for judicial harmony. The FSM Supreme Court can certify such questions of state law to the state courts. But when, if the equitable or mechanic's lien claims had been presented in the original complaint, the court could then have certified the questions to the state court to determine whether such liens exist under state law and when the original complaint's factual allegations support such claims, there was no reason why that claim could not have been made then with discovery on-going while the state court considered the question. But when, considering the circumstances, it has become too late to bring this claim, a motion to amend the complaint to add a declaratory judgment claim that the plaintiffs have such a lien will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. But if a responsive pleading has been served, a party may amend the party's pleading

only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Rule 15 mandates that leave to amend a party's pleading shall be freely given by the court. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

When deciding whether justice requires that a plaintiff be permitted to amend its complaint, a trial court must navigate the conflicting principals that litigation must be brought to an end and that justice should be done. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

Although a defendant's motion to dismiss certain of plaintiffs' claims was granted because plaintiffs' counsel pled claims upon which relief could not be granted, this does not necessarily imply that plaintiffs have no claims against the defendant upon which relief might be granted. Thus, justice is better served by allowing the plaintiffs to amend their complaint than to preclude them from so doing. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

A proposed copy of plaintiffs' first amended complaint, attached as an exhibit to the plaintiffs' motion to amend complaint, will not be considered by the court to be the plaintiffs' operative pleading. When a motion to amend is granted, the plaintiffs must file and serve a separate pleading. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 337 & n.3 (Pon. 2003).

That alleged contracts may have extended from June 5, 1995, to July 5, 1996, does not permit the plaintiffs to pursue all of their alleged claims in a complaint filed on July 4, 2002. The relevant inquiry is when the alleged contract breaches occurred and the consequent causes of action accrued, not when the alleged contracts expired. When all of the claims except those for wages first payable on or after July 4, 1996, accrued more than six years from the filing of the complaint, the complaint will be dismissed, but without prejudice to the filing of an amended complaint for any wage claims that accrued on or after July 4, 1996. Under Civil Rule 15(c), the filing of any such amended complaint will relate back to July 4, 2002, the original complaint's filing date. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

A party may amend its pleading once as a matter of course at any time before a responsive pleading is served. Otherwise a party may amend the its pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2 (Pon. 2003).

A party must plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2 (Pon. 2003).

A motion to amend a complaint to add the FSM as a party will be granted when the original complaint was an appeal of a Pohnpei state administrative decision and when a related FSM administrative decision involving the plaintiff's related tax matters was recently issued since, as the plaintiff asserts that Pohnpei and the FSM are inconsistently interpreting tax laws, it seeks to add the FSM as a defendant so that both Pohnpei and the FSM will be required to tax it uniformly, without potentially subjecting it to double tax liability. Judicial economy weighs in favor of permitting plaintiff to file its amended complaint and consolidate the appeals of inconsistent Pohnpei and FSM administrative decisions. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2-3 (Pon. 2003).

Should the plaintiffs seek to prove and recover damages for an oil spill not mentioned in their complaint, they will need to amend their pleadings because an oil spill damaging more than just the reef on which the vessel ran aground is a claim sufficiently different from the one of damage to the reef from an allision that it requires such pleading notice to the defendants. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 617 (Yap 2004).

By its terms, Rule 15(b) applies after evidence has been introduced, either at an evidentiary hearing

held in connection with a pretrial motion, in the course of trial, after the close of testimony, after the return of the verdict or entry of judgment, and on rehearing or on remand following an appeal. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

A motion to amend the pleadings brought, and granted, before the trial or any evidentiary hearing was held falls under Rule 15(a). FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

Under Rule 15(a), a court should generally exercise its discretion liberally to allow amended pleadings when justice so requires. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 (Pon. 2004).

Rule 15's purpose is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7-8 (Pon. 2004).

When the defendants have never specified the defenses they believe that a non-party may have other than a reference in earlier filings to a defense that the court has rejected on other occasions and, more importantly, when the defendants, under the terms of the guaranty, waive any right to the non-party borrower's defenses, no undue prejudice to the defendants appears that would preclude the court from allowing the pleadings to be amended. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Even if a motion were brought under Rule 15(b) and had been made after trial, the court could still permit the amendment of the pleadings despite the defendants' objection because if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

A motion to strike amended pleadings and evidence concerning it will be denied when the court has determined that justice required amendment of the pleadings and that the presentation of the action's merits would be subserved thereby. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Although generally leave to amend a complaint should be freely granted, once judgment has been entered, the filing of an amended complaint is not permissible until the judgment has been set aside or vacated under Rule 59(e) or 60(b). The merit of this approach is that to hold otherwise would enable the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the philosophy favoring the finality of judgments and the expeditious termination of litigation. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When the defendants have not appeared and served responsive pleadings, the plaintiff can amend its pleadings once as a matter of course and without leave of court. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When no responsive pleading has been filed in a case, but only a Rule 12(b) motion to dismiss, which is not a responsive pleading, has been filed, the plaintiff could have amended his complaint without leave of court at anytime before the court acted on the motion to dismiss. Since he chose not to do so, the court will not grant him leave to do now what he has had the opportunity to do for over a year. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

An answer is a pleading, and a party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Lack of personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. An amended answer containing a motion to dismiss served five days after service of the original answer, is well within the 20-day period specified in Rule 15(a) for amending a pleading as a matter of right. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Personal jurisdiction may not be raised in an amendment that requires leave of court. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. Mailo v. Chuuk, 13 FSM R. 462, 472 (Chk. 2005).

A movant's motion to amend its answer will be granted when the movant's new cross-claims and counterclaim are either related to its previous cross-claim and based on the same nucleus of operative fact, or are based on an event that has occurred since the case started and is closely related to the litigation so none of the grounds for denial are apparent, and when the one declared ground – futility of amendment – has been rejected. Mailo v. Chuuk, 13 FSM R. 462, 472 (Chk. 2005).

An amended complaint can filed as a matter of course before an answer to the original complaint has been filed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

Although when issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings, but when the plaintiff had a plain right under the case's facts to pursue a defendant for unjust enrichment and the action was tried as it was pled, which is to say an action for unjust enrichment, it is of no moment whether the parties consented under Rule 15(b) to try this matter as a contract action. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 517 (App. 2005).

Rule 15(a) states that leave to amend the complaint "shall be freely given when justice so requires." The purpose of the rule is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be "freely given." This does not mean that a showing of undue delay, for example, means that a court should deny leave to amend. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether or not to grant leave to amend the complaint. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

Delay in seeking amendment is alone not sufficient to show bad faith when the movant's delay in asserting a guaranty claim resulted from its own files being "difficult to locate" and the Federated

Development Authority's destruction or loss of records. While this explanation might not excuse a delay where there was some evidence of a motive to harass or of bad faith, it is sufficient here because no motive for the movant to delay was shown or appears. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

It is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395 (App. 2006).

Prejudice is not shown by a speculative argument concerning a denial of consolidation with another case when it is unclear how the state's tort liability to another is a defense to the appellee's contract claim against the appellants or how that tort liability would offset the appellee's recovery since not consolidating the cases did not prevent the appellants from introducing into this case any relevant evidence relating to that case. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 395-96 (App. 2006).

When the defendants had eight months after he plaintiff filed its motion to amend to move to reopen discovery; when the parties stipulated to the facts necessary for the trial court to reach a decision on the promissory note and guaranty claims; and when the defendants admitted there was nothing to discover, the defendants cannot have been prejudiced by a lack of opportunity for discovery. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

Although Rule 15(a) provides that a party may amend the party's pleading by leave of court or by the adverse party's written consent and that leave shall be freely given when justice so requires, Rule 15(a) is not applicable when the motion is brought post-judgment for events that occurred after the complaint was filed and seeks to add two new defendants and a new cause of action solely against those two. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

When a Rule 15(a) motion to amend is brought post-judgment, it must comply with the Rule 60(b) timing requirements and it will generally be accompanied by a Rule 60(b) motion for relief from judgment because once a judgment is entered the filing of an amendment cannot be allowed until the judgment is set aside or vacated under Rule 59 or Rule 60. Herman v. Municipality of Patta, 16 FSM R. 167, 170 & n.3 (Chk. 2008).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known at the time. A supplemental pleading, however, is designed to cover matters subsequently occurring but pertaining to the original cause. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

Rule 71 only permits enforcement of orders and judgments against non-parties when obedience to an order may be lawfully enforced against a person who is not a party. It does not support joinder of non-parties as parties or a motion to amend a complaint. Herman v. Municipality of Patta, 16 FSM R. 167, 172 (Chk. 2008).

The rule governing amendments of pleadings is designed to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. Smith v. Nimea, 16 FSM R. 186, 188 (Pon. 2008).

A party may amend the party's pleading only by leave of court, or by the adverse party's written

consent, and leave shall be freely given when justice so requires. In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rules require, be freely given. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

When the affirmative defenses that the defendants seek to add could not have been raised at the time the original answer was filed as the administrative hearing at issue had not yet taken place; there is no undue delay, bad faith or dilatory motive on the defendants' part, as well as no undue prejudice to the plaintiff; and when it is the defendants' first request for amendment and it is reasonably calculated to ensure that all appropriate claims are adjudicated on the merits, the amended answer will be permitted. Smith v. Nimea, 16 FSM R. 186, 189 (Pon. 2008).

When only two parties were named as defendants in the original complaint's caption, but a third was clearly named as a defendant in the complaint's text and it was served a separate summons, the third is a party-defendant because the failure to name a party as a defendant in the caption does not mean the action cannot be maintained against that party if the complaint makes a number of explicit references to that party and that party was served since a caption's technical defects can always be amended. Nakamura v. Mori, 16 FSM R. 262, 266 n.1 (Chk. 2009).

In the absence of undue delay, bad faith or dilatory motive on the movant's part; or the movant's repeated failure to cure deficiencies by amendments previously allowed; or undue prejudice to the opposing party by virtue of the amendment's allowance; or futility of amendment, leave to amend should, as the rule requires, be freely given. Nakamura v. Mori, 16 FSM R. 262, 266-67 (Chk. 2009).

Since joint tortfeasors are not indispensable parties, leave to amend a complaint to drop an alleged joint tortfeasor from the suit should be freely given. Nakamura v. Mori, 16 FSM R. 262, 267 (Chk. 2009).

Leave is freely given to amend complaints to change the theory of recovery and to add new claims when those new theories and claims are based upon the same facts and occurrences that were pled in the original complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since a plaintiff need not advance a legal theory or, if the plaintiff does advance one, it need not be correct, and since every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, defendants generally will not be prejudiced by an amendment adding new claims or causes of action based on the same factual allegations as the original complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

A negligence cause of action may be amended to add a punitive damages claim subject to proof at trial and, in the absence of such proof, the defendants may move to disallow any punitive damages award. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

A motion to amend a complaint may be denied if it is futile. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is nothing inherently abnormally dangerous about road drainage systems, a proposed amendment to add a strict liability claim for damages from a road drainage system would be denied as futile since it would not be able to withstand a summary judgment motion. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When the original complaint alleged that the defendants' negligence damaged the plaintiffs' property and interfered with their use and enjoyment of their dwelling, the defendants will not be prejudiced by an amended complaint including a nuisance theory of recovery. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When, in the original complaint, the plaintiffs sought damages for pain and suffering, they inartfully pled an emotional distress claim, and a clarification of this claim in an amended complaint will not prejudice the defendants. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

An attempt to reinstate a defendant dismissed for lack of service by including it in an amended complaint after it has been dismissed, cannot be considered a motion to amend the complaint to add a new party but must be considered, at least as far as the dismissed defendant is concerned, to be a motion to reinstate a party earlier dismissed for lack of service of process on that party, in other words, a motion to enlarge time to effect service on the dismissed defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 15 (amendment of pleadings and relation back) cannot be used to subvert the principles that underlie Rule 4(j) – prompt service of process. The purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence rather than to extend the time for service indefinitely. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 4(j) is intended to force parties and their attorneys to be diligent in prosecuting their causes of action. Filing an amended complaint does not justify the lack of prior service of process on a defendant in a multi-defendant case. The normal and expected procedure is to serve the unserved defendant first and then amend the complaint. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

When the plaintiffs offer no explanation whatsoever why they did not, at anytime, serve the summons and complaint on a defendant later dismissed for lack of service or why they never sought additional time to serve that defendant, the court will not give the plaintiffs leave to file a proposed first amended complaint that includes the previously-dismissed party-defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

It is improper for a party to use summary judgment briefs to effect a *de facto* amendment of its pleadings to assert new causes of action. Therefore a claim that falls outside the scope of the plaintiff's complaint is not properly before the court in a summary judgment motion and will be disregarded. Berman v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served and the defendants' motion to dismiss is not a responsive pleading. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

Even if the defendants had filed an answer and raised their Rule 12(b) defenses in the answer, the court may still grant leave for the plaintiffs to amend their complaint, and Rule 15(c) instructs the court clearly that leave shall be freely given when justice so requires. It does not serve justice by denying a complaint where there may be a source of jurisdiction, and the amendment of a single letter in the complaint may be the difference between dismissal and a foot in the door of justice – the plaintiffs should not be punished for their counsel's inexplicable clerical error. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

When the trial court declined to rule cross summary judgment motions on the plaintiff's retaliation claim because it reasoned that the claim was not properly before it because her claim fell outside the scope of her complaint, the plaintiff could have then sought to amend her pleadings either by leave of court or by written consent of the adverse party, but did not. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

When the proper procedure to assert a new claim is for the plaintiff to move to amend the complaint in

accordance with Civil Rule 15(a),and that was not done even though a month and a half elapsed between the trial court's decision on the cross summary judgments motions and its order setting trial and a further month and a half elapsed before trial and when, although courts exercise their discretion liberally to allow pleadings to be amended out of time, the plaintiff did not, before trial, ask for leave to amend the pleadings to include her free speech-retaliation claim and the factual allegations underpinning it, the claim was not then before the court for trial. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

When an FSM court has not previously construed whether a plaintiff may use a Rule 56 summary judgment motion to make additional claims instead of amending the pleadings through Rule 15 and when those rules are identical or similar to U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 n.3 (App. 2011).

When an issue not raised in the pleadings is raised at trial without objection by either party and evidence is admitted on the matter, the issue is to be considered tried by implied consent per FSM Civil Rule 15(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 350 (App. 2011).

If an issue was actually tried and evidence on the matter admitted with the parties' implied or express consent, it must be treated as if it was raised by the pleadings and the trial court should have ruled on it and granted whatever relief, if any, the plaintiff had proven herself entitled to. But when, without a transcript, it is impossible for the appellate court to determine if the retaliation issue was actually tried with the parties' consent, express or implied, the appellate court will not consider this assignment of error because there is nothing to show that it was ever properly before the trial court since the plaintiff never sought to amend the pleadings to include it although she had ample opportunity to do so, and there is no evidence that it was ever tried by the parties' express or implied consent. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350-51 (App. 2011).

Since, in order to replace a "John Doe" defendant with a named party, a plaintiff would still have to move, under Civil Procedure Rule 15, to amend the pleadings to replace the John Doe defendant with a named defendant, and that to do so, all of Rule 15's specifications still must be met, and since, even in the absence of John Doe defendants, a plaintiff can move to amend her pleadings should she identify through discovery other persons who may be liable on her claims, the presence of "John Doe" defendants serves no purpose and a trial court should dismiss them without prejudice. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

The dismissal of "John Doe" defendants will not prevent a plaintiff from later seeking to amend her complaint if she ascertains that others should also be named defendants. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

The failure to verify the complaint in a shareholders' derivative action is a technical defect that can be cured by amendment. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

If a derivative action complaint lacks the proper allegation that it is not a collusive action it is subject to dismissal although a reasonable opportunity to amend should be permitted. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A derivative action plaintiff who has failed to both verify the complaint and to allege the absence of collusion may be given a reasonable time to cure both defects rather than have his derivative action dismissed. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The court will allow the defendant to amend its answer when the action is still in the discovery stage since it is in the interest of justice to allow the amendment and leave to amend a pleading shall be freely given when justice so requires. Pacific Sky Lite Hotel v. Penta Ocean, 18 FSM R. 109, 110 (Pon. 2011).

Leave to amend should be freely given in the absence of undue delay, bad faith, or dilatory motive on the movant's part, or the movant's repeated failure to cure deficiencies by amendments previously allowed; or undue prejudice to the opposing party by virtue of the amendment's allowance; or futility of amendment.

Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 144 (Pon. 2012).

Although a court should exercise its discretion liberally to allow amended pleadings, a motion to amend a complaint may be denied if it is futile. An amendment may be futile if the claim(s) sought to be added are barred by the relevant statute of limitations or if the amendment to the complaint fails to state a claim. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 144 (Pon. 2012).

Since a party may amend its pleading once as a matter of course at any time before a responsive pleading is served if the pleading is one to which a responsive pleading is permitted, the plaintiffs were entitled to amend their complaint once as a matter of course when the defendant filed a motion to dismiss the original complaint since a motion is not a pleading. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

Leave to amend a complaint must be freely given if justice so requires, but the court must deny leave to amend when the amendment would be futile. One reason an amendment would be futile is if the claims are barred by the relevant statute of limitations. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When a defendant's alleged promise of compensation and its alleged subsequent repudiation of that promise may have tolled the running of the statute of limitations are undated, the plaintiff's cause of action might not, depending on the circumstances, be time-barred, and thus his proposed amended complaint is not futile on its face. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

Since leave to amend is freely given, when it is not apparent from the proposed amended complaint's face that the amended complaint is futile, the plaintiff's motion to amend his complaint will be granted. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

As a threshold matter, the court must determine if allowing an amendment will result in injustice and prejudice to the opposing party. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

In the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc., the leave sought to amend pleadings should, as the rule requires, be freely given. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

When the amendments sought arose out of conduct, transaction, or occurrence of events between same plaintiff and defendants at different intervals and are inextricably linked, FSM Civil Rule 15(c) provides for the relation back of claims asserted in an amendment even if a different theory of recovery is presented. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

It is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim. Ramp v. Panuelo, 18 FSM R. 256, 260 (Pon. 2012).

When there is no apparent bad faith, mere delay is not enough of itself to bar an amendment. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

A showing of undue delay does not mean that a court should deny leave to amend. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether or not to grant leave to amend the complaint. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

When a party requests leave of the court to amend pleadings, leave shall be freely given. In addition, such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made upon motion of any party at any time. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Under Rule 15(a), a court should generally exercise its discretion liberally to allow amended pleadings when justice so requires. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Leave is freely given to amend complaints to change the theory of recovery and to add new claims when those new theories and claims are based upon the same facts and occurrences that were pled in the original complaint. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

Since a plaintiff need not advance a legal theory or, if the plaintiff does advance one, it need not be correct and since every final judgment must grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings, defendants generally will not be prejudiced by an amendment adding new claims or causes of action based on the same factual allegations as the original complaint since the purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence and to provide maximum opportunity for each claim to be decided on the merits rather than procedural technicalities. Ramp v. Panuelo, 18 FSM R. 256, 261 (Pon. 2012).

It is the long-established rule in admiralty cases that omissions and deficiencies in pleadings may be supplied and errors and mistakes in practice in matters of substance, as well as of form may be corrected at any stage of the proceedings for the furtherance of justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known when the original pleading was filed, while a supplemental pleading is designed to cover matters subsequently occurring but pertaining to the original cause. The amendment of pleadings is governed by Civil Procedure Rule 15(a) (and in some instances, 15(b)), while Rule 15(d) governs supplemental pleadings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Leave to amend a complaint ought to be freely given. The purpose is to provide maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Although a court should exercise its discretion liberally to allow amended pleadings, it must deny a motion to amend a complaint if it is futile, and whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

While undue delay or bad faith on the movant's part are grounds on which to deny amendment of a complaint, delay alone in seeking to amend a complaint is not sufficient to show bad faith. To be a ground for denial the delay must have caused prejudice to the adverse party. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Since a party may state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds, a party may plead in the alternative, and the inconsistent pleadings are not a ground to deny amendment to a complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Even though a court must exercise its discretion liberally to grant leave to amend a complaint, the court should deny a motion to amend when it would be futile to amend the complaint to add diverse parties from whom no relief can be obtained since they are not statutorily liable to plaintiff. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Ordinarily, an amended pleading supersedes the former pleading and renders it of no legal effect. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

When a plaintiff has served a defendant with a complaint before filing an amended pleading, the earlier complaint is superseded only when the plaintiff serves the amended complaint on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

There is nothing improper about holding one defendant in default of one complaint and the other defendants liable on a later amended complaint. Otherwise, if an amended complaint superseded the prior complaint with respect to all defendants once the plaintiff served it on a single defendant, a plaintiff might be unable to obtain a judgment against a defendant, who although properly served with the earlier complaint, evades service of an amended complaint because then the plaintiff would no longer have an effective complaint against any defendant who had not yet been served the amended pleading. Requiring a plaintiff to gamble on the likelihood of obtaining service would discourage amendments, which is contrary to the liberal amendment policy of Civil Procedure Rule 15. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 415 (Yap 2012).

Civil Procedure Rule 5(a) provides that no service needs to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served on them in the manner provided for service of summons in Rule 4. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

The class plaintiffs may obtain a default judgment against one defendant on the first amended complaint since that is the one that was served on him and that he failed to appear to answer or otherwise defend. Since the second amended complaint, even if it alleges no new facts, does contain new or additional claims for relief and potential increased financial liability for that one defendant, it must be served on him if the class plaintiffs intend to hold him liable on the second amended complaint's new legal theories and claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

If the class plaintiffs wish to obtain a judgment against a defendant based on the second amended complaint they must effect service of process of that complaint on him, but if they are content to obtain a default judgment against him based on the first amended complaint, they will not be required to serve the second amended complaint on him. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

When the Pohnpei statute does not provide that immediate dismissal is explicitly required if a plaintiff fails to name Pohnpei as a defendant and since a suit against a person in his or her official capacity is treated as a suit against the entity that employs that officer, Pohnpei is, in effect, already a party-defendant when its Governor was sued in his official capacity. The court will therefore deny a motion to dismiss and give the plaintiffs leave to amend their complaint to add the State of Pohnpei as a defendant. Perman v. Ehsa, 18 FSM R. 432, 437-38 (Pon. 2012).

An amendment to add the state as a defendant was more one of form than one of substance because the State of Pohnpei was, in effect, already a party-defendant since the Governor had been sued in his official capacity and a suit against a Governor in his official capacity is treated as a suit against the State. The order permitting the plaintiffs to amend their complaints merely acknowledged that fact. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

Since an answer is not a pleading for which a responsive pleading is required, a party filing an answer has only 20 days within which to amend its answer without seeking and obtaining either the leave of court or the written consent of the adverse party. The answering party cannot avoid Rule 15 by reserving the right to unilaterally amend its pleadings whenever it feels like it. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

If a party decides that it needs to assert an affirmative defense that was not pled in its answer, it may amend its answer as a matter of right only within 20 days of its answer. Otherwise, to amend its answer to add another affirmative defense, the party must seek and obtain either the leave of court or the adverse

party's written consent. A party must adhere to Rule 15(a) if and when it wishes to assert an additional affirmative defense. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Civil Procedure Rule 15(a) provides that leave to amend the complaint "shall be freely given when justice so requires." The rule's purpose is to allow maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rule requires, be "freely given." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

A showing of undue delay, for example, does not mean that a court should deny leave to amend. Delay in seeking amendment is alone not sufficient to show bad faith when there is no evidence of a motive to harass or of bad faith and no motive for the movant to delay was shown or appears. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether to grant leave to amend the complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

In order to determine if the threat of prejudice is sufficient to deny leave to amend, the court will consider both parties' positions and the effect the request will have on them. This entails an inquiry into the hardship to the moving party if leave to amend is denied, the reasons for the moving party failing to include in the original pleading the material to be added, and the resulting injustice to the opposing party if leave to amend is granted. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Although a court should liberally allow amended pleadings, it must deny a motion to amend a complaint if it is futile. Whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

A proposed amended complaint that narrows the possible reasons why a defendant failed to refloat a vessel should not prejudice the defendant because it narrows the scope of relevant discovery and the possible grounds for liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

When the only dilatory motive that the defendants suggest is that the 9% prejudgement interest on any future judgment in this case will continue to accrue to the defendants' detriment but since a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest; when alter ego theories have been a part of this case since at least the second amended complaint, if not the first; and when the hardship to the plaintiffs if the corporate defendants are unable to pay a judgment is considerable, the court will, since amendment ought to be freely given, allow amendment to add the corporations' owners as defendants with conditions limiting discovery so as to mitigate any potential prejudicial delay to the existing defendants. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93-94 (Yap 2013).

In the absence of any ground to include or reinstate a defendant whose earlier dismissal the plaintiffs had acquiesced to, the court cannot allow the plaintiffs to file an amended complaint reinstating the earlier dismissed defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When no undue prejudice to the already appearing defendants is apparent, the court may allow the plaintiffs to amend its complaint to name a new defendant on the condition that the discovery sought from

that defendant is limited. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

An amended pleading, FSM Civ. R. 15(a), is designed to include matters occurring before the complaint was filed but either overlooked or not known at the time, while a supplemental pleading, FSM Civ. R. 15(d), is designed to cover matters occurring later but pertaining to the original cause. Smith v. Nimea, 19 FSM R. 163, 167 n.1 (App. 2013).

Civil Procedure Rule 15(b) permits issues tried by implied consent to be considered as amendments to the pleadings. Smith v. Nimea, 19 FSM R. 163, 174 n.5 (App. 2013).

Although a court should exercise its discretion liberally to allow amended pleadings, when a proposed amendment to a complaint would be futile because it still would not state a claim upon which the FSM Supreme Court could grant relief, the court may deny the motion to amend. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

When the proposed amended complaint adding a claim for conspiracy does not allege any underlying torts, the amendment would be futile and the motion to amend would accordingly be denied. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

While an amended pleading, once served, would render a prior pleading of no effect, if a court denies a motion to amend a pleading, the prior pleading must remain as the operative pleading, as is. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

When the court denies a plaintiff's motion to amend his complaint, his prior pleading remains in effect and the defendants must defend against it and the torts alleged in it. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

Under Rule 15(c), whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Rule 15(c) is based on the notion that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 438-39 (Chk. 2014).

When, if claims for health insurance premium contributions due before March 16, 2006, had been included in the original complaint and if the FSM had asserted the six-year statute of limitations defense, the statutory defense would have barred their recovery, the proposed amended complaint's relation back to the original filing date of March 16, 2012, cannot revive those claims. The court will therefore permit the proposed amended complaint but bar the plaintiff from seeking any health insurance premium contributions due before March 16, 2006. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 439 (Chk. 2014).

When the plaintiff's claim for damages to his car from a break-in were not tried by the parties' consent during the trial on the plaintiff's claim for failure to repair his car; when the break-in damages claim was not raised by the pleadings and admitting evidence about it would prejudice the defendant who had not had adequate notice that the issue would be tried; when excluding the evidence about the break-in would not prejudice the plaintiff; and when the break-in was not part of a common nucleus of operative fact with the defendant's alleged behavior in failing to properly repair the plaintiff's vehicle but represented an entirely

new claim that the plaintiff could file against the defendant for failure to properly safeguard his property, all evidence that pertained to the alleged break-in would be excluded and not considered. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 466, 469-70 (Pon. 2014).

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of $100,000 under 24 F.S.M.C. 920 instead of $500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

By its terms, Rule 15(b) applies after evidence has been introduced, either at an evidentiary hearing held in connection with a pretrial motion, in the course of trial, after the close of testimony, after the return of the verdict or entry of judgment, or on rehearing or on remand following an appeal. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

Even if a Rule 15(b) motion were made after trial, the court could still permit the amendment of the pleadings despite the defendants' objection because if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the action's merits will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496-97 (Pon. 2016).

When the defendant was not prejudiced because, although someone was not named in a list in the complaint, the amount of his ticket was calculated into the damages set forth in the complaint; when, if the name of were added to the complaint, the damages amount would remain the same; when it is unlikely that a defendant will be prejudiced where the facts underlying a claim sought to be added are substantially similar to those underlying the original claim; when the name's omission in the complaint was an oversight; and when there is no apparent bad faith, leave to amend the complaint will be granted since mere delay is not enough of itself to bar an amendment. The amendment will relate back to the original pleading and will conform to the evidence as presented during trial. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 497-98 (Pon. 2016).

– Pleadings – Counterclaims and Cross-Claims

When a party has mistakenly designated a counterclaim as a defense, the court, on such terms as justice requires, shall treat the pleading as if there had been a proper designation. Senda v. Semes, 8 FSM R. 484, 503 (Pon. 1998).

A counterclaim may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 n.1 (Yap 1999).

Civil Procedure Rule 13(h) provides that persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19 and 20. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

A defendant is not required to obtain leave of court before naming additional defendants on its counterclaim, when the counterclaim is brought in the original answer, but although not required by Rule 13(h), the general practice is to obtain a court order to join an additional party. Island Dev. Co. v. Yap, 9 FSM R. 288, 291 (Yap 1999).

A pleading must state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. Youngstrom v. NIH Corp., 11 FSM R. 60, 61 (Pon. 2002).

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim and a pleading may be amended with leave of court to include a counterclaim when the counterclaim either matured or was acquired by the pleader after serving his pleading or when a pleader failed to set it up through oversight, inadvertence, or excusable neglect, or when justice requires. Youngstrom v. NIH Corp., 11 FSM R. 60, 62 (Pon. 2002).

A defendant's "cross-claim" against a plaintiff should properly be titled as a "counterclaim" and not a "cross-claim." Primo v. Semes, 11 FSM R. 324, 325 n.1 (Pon. 2003).

A cross-claim that sets out a legal conclusion and that does not provide a short and plain statement of the facts on which the legal conclusion rests, lacks sufficient factual allegations and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

When cases have been consolidated and a party to the consolidated case, files a "third party complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A "third-party complaint" is actually a counterclaim when it is made against someone already a party because a third-party complaint is a device used to bring a non-party into a case. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 506 n.1 (App. 2005).

A defendants' "reply" to the plaintiff's reply to the defendants' counterclaims is not an authorized pleading and will be stricken since a "pleading" unauthorized under the civil procedure rules and practice may be stricken. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

A compulsory counterclaim is any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A claim against someone who is not an opposing party cannot be a counterclaim. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

The legal standard for the dismissal of a counterclaim is the same as that for the dismissal of a complaint. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A counterclaim may be dismissed as a matter of law for two reasons: 1) lack of a cognizable legal theory or 2) insufficient facts under a cognizable legal theory. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612-13 (Yap 2009).

An ad damnum clause that is properly considered as a part of the counterclaimants' prayer or demand for the relief sought under Rule 8(a)(3), and not as a part of the counterclaim's factual basis under Rule 8(a)(2), may be disregarded when testing the sufficiency of a counterclaim since the court will only award

relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in the party's pleadings. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A counterclaim cannot be dismissed simply because the counterclaimant has failed to state precisely all elements that give rise to the alleged legal basis for recovery; otherwise, a party's counterclaim could be lost by its attorney's failure to draft the counterclaim properly despite the counterclaim's potential validity and it would also effectively eliminate the "notice" pleading theory embedded in the Civil Procedure Rules. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 613 (Yap 2009).

A defendant's request for a dismissal for a plaintiff's breach of contract is actually not a claim for dismissal, but rather a counterclaim as the defendant argues that the plaintiff breached the contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

A cross-claim is where one party can bring a claim against a co-party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

A counterclaim is a valid claim when it is a compulsory counterclaim because the counterclaim arose out of the same transaction or occurrence that is the subject matter of the opposing party's claim. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

Regardless of whether the pleadings have labeled them correctly, claims against an opposing party are counterclaims and claims against a co-party are cross-claims. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 107 n.3 (Pon. 2010).

A breach of contract counterclaim by loan guarantors against the bank would have a six-year limitation period. But, as that would have been a Civil Rule 13(a) compulsory counterclaim, the guarantors had to raise it in their earlier lawsuit or that claim was waived. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

Paragraphs in an answer that do not contain any factual allegations on which a claim for relief could be based but which, if carefully read in conjunction with the movants' cross-claim against the pleader, are an answer to the movants' own cross-claim and are not a new cross-claim by the pleader, and thus, a motion to dismiss the "cross-claim" in those paragraphs will be denied. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 494-95 (Chk. 2013).

– Pleadings – Impleader

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

Where resolution of issues in a third-party complaint is unnecessary to the resolution of the primary claim and will result in a delay in the resolution of the primary claim, and the answer to the third-party complaint has added more complex issues, unrelated to the primary action, a motion to sever may be granted. International Trading Corp. v. Ikosia, 7 FSM R. 17, 19 (Pon. 1995).

A third-party due process claim against the Land Commission will be dismissed when, although the

Land Commission was named as a third-party defendant in the caption, it was never served with a Third-Party Complaint and Summons in accordance with the Kosrae Civil Procedure Rules. Jonas v. Paulino, 9 FSM R. 519, 521-22 (Kos. S. Ct. Tr. 2000).

Third-party practice under Rule 14 is the procedure by which a defendant can bring in as a third-party defendant one alleged to be liable to him for all or part of plaintiff's claim against him. Rule 14 is intended to provide a mechanism for disposing of multiple claims arising from a single set of facts in one action expeditiously and economically. On the other hand, Rule 19(a) is directed to factually complex, multi-party litigation where the joinder issue involves an analysis of greater subtlety. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

Rule 14 allows a defendant to bring in third parties by causing a summons and complaint to be served upon persons not a party to the action who are or may be liable to the defendant for all or part of the plaintiff's claim against the defendant, but if those persons are added as parties plaintiff in the action, then they are parties, not third parties, and no third party complaint could possibly be brought against them. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

If persons the defendant seeks to add as third parties become plaintiffs, then the "claims" the defendant seeks to bring against them can properly be raised as defenses to the plaintiffs' action, and a motion for leave to file a third party complaint against them must be denied. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 204 (Chk. 2002).

When cases have been consolidated and a party to the consolidated case, files a "third party complaint" against a party consolidated into the case it cannot actually be a third party complaint, regardless of what the "third party plaintiff" calls it, because a third party complaint is a device used to bring a non-party into a case. Claims against an opposing party are counterclaims, regardless of whether counsel has labeled them correctly. Claims against a co-party are cross-claims. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003).

A "third-party complaint" is actually a counterclaim when it is made against someone already a party because a third-party complaint is a device used to bring a non-party into a case. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 506 n.1 (App. 2005).

A "counterclaim" against non-parties will be dismissed since a third-party complaint, not a counterclaim, is the proper vehicle for defendants to raise claims against non-parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 610, 612 (Yap 2009).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

When a default has been entered with a default judgment pending the determination of damages, it is inappropriate for the court to allow a third party complaint to be filed or to give declaratory relief involving a third party not named as a defendant in the matter. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

If it is filed no more than 10 days after the original answer is filed, a defending party may, without the leave of the court, cause a summons and third-party complaint be served on a person not party to the case who may be liable to the third party plaintiff for all or part of the plaintiff's claim. If the third-party complaint is not filed within ten days after the defendant's original answer is served, then the defendant must ask the trial court for leave to implead, and the decision whether to implead a third-party defendant is addressed to

the trial court's sound discretion. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

It is the generally accepted rule that petitions to add a third party to a case once a trial is about to begin, or once it has begun, is untimely and will be denied, and that any efforts to implead a third party after the entry of default is also untimely and the request is moot. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

– Pleadings – More Definite Statement

When a pleading is alleged to be too vague and ambiguous for the adverse party to respond the appropriate motion is one for a more definite statement, not one to strike. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309-10 (Pon. 1995).

In view of the liberal discovery rules and procedures available, motions for more definite statement are generally disfavored, and are granted, not if a better affirmative pleading would enable the movant to provide a more enlightening or accurate response, but only if the pleadings addressed are so vague that they cannot be responded to. Whether such a motion should be granted is generally a matter within the court's discretion. FSM Dev. Bank v. Nait, 7 FSM R. 397, 399 (Pon. 1996).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading and the motion shall point out the defects complained of and the details desired, but, in view of the liberal discovery rules and procedures available, motions for more definite statement are generally disfavored. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Motions for a more definite statement are granted only if the pleadings addressed are so vague that they cannot be responded to, not if a better affirmative pleading would enable the movant to provide a more enlightening or accurate response. Therefore, if a pleading meets the requirements of Rule 8 and fairly notifies the opposing party of the nature of the claim, a motion for more definite statement will not be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

Rule 12(e) is designed to strike at unintelligibility rather than want of detail. A motion for a more definite statement should not be used to test an opponent's case by requiring him to allege certain facts or retreat from his allegations and it should not be granted merely to require more evidentiary detail that may be the subject of discovery. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

When a due process allegation is not so vague and ambiguous that the government cannot frame a response to it and when the government asks the court to require the defendants to inform it of which defendants were harmed, what due process rights they were deprived of, and which policy-making official(s) caused this deprivation, and when these are details that the government can seek to learn through discovery, the government's motion for a more definite statement will be denied. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

When the defendant asks that the plaintiff be required to add to his pleadings further allegations about the dates his pay was withheld, what pay periods were covered, how his pay was withheld from him, how the defendant authorized and executed the withholding, and what other employees were treated differently from him before it makes an answer, the motion will be denied because, while this information may be useful as the litigation progresses, its absence does not appear to leave the complaint so vague that the defendant cannot frame a response. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

Rule 12(e) is designed to strike at unintelligibility rather than want of detail. A motion for a more definite statement should not be used to test an opponent's case by requiring him to allege certain facts or retreat from his allegations and it should not be granted merely to require more evidentiary detail that may be the subject of discovery. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

– Pleadings – Striking Pleadings

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. Berman v. FSM Supreme Court, 6 FSM R. 109, 112-13 (Pon. 1993).

Where a wife is not a party to an action the court may strike from the complaint references to harm to her because she is not a party to the litigation and therefore damages for harm to her cannot be obtained as part of the action. It would be unfair to allow the plaintiff to seek damages for harm to his wife while maintaining that she is a non-party who is not subject to the pleading, discovery, and evidentiary rules that a party is bound by. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 407 (Pon. 1994).

Any party may move to strike a third-party claim, or for its severance or separate trial. The decision whether to sever a third-party complaint is left to the sound discretion of the trial court. In determining whether to sever a third-party complaint, a court considers whether continued joinder of claims will unduly complicate or delay the primary action. International Trading Corp. v. Ikosia, 7 FSM R. 17, 18 (Pon. 1995).

A court has inherent power to strike those portions of a pretrial statement that do not comport with its order for pretrial statements. Damarlane v. United States, 7 FSM R. 167, 170 (Pon. 1995).

When a pleading is alleged to be too vague and ambiguous for the adverse party to respond the appropriate motion is one for a more definite statement, not one to strike. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309-10 (Pon. 1995).

Upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or immaterial matter. Rule 12(f) is a useful vehicle for disposing of both legally and factually deficient defenses. The former defenses are those which would not under the facts alleged, constitute a valid defense to the action, while the latter are irrelevant defenses appropriately disposed of under that portion of Rule 12(f) dealing with immaterial matter. Senda v. Semes, 8 FSM R. 484, 494-95 (Pon. 1998).

Motions to strike under Rule 12(f) are viewed with disfavor and are infrequently granted. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Motions to strike redundant matter under Rule 12(f) are viewed with disfavor and are infrequently granted because the mere presence of redundant matter is not usually a sufficient ground and because a motion to strike for redundancy ought not to be granted in the absence of a clear showing of prejudice to the movant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

A court may order stricken from any pleading any redundant matter. Generally, courts will strike a claim as redundant when it essentially repeats another claim in the same complaint. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Rule 12(f) motions to strike are directed toward a complaint's internal redundancy, not toward non-internal redundancy where the claim is redundant to one in a different action. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

The relief requested in the motion to strike a claim in a complaint on the ground that it is the same as a claim in the amended complaint in different civil action is more appropriately granted through consolidation

of both actions because, since the claims are the same, the actions involve a common question of law or fact. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115-16 (Kos. 2001).

A motion to strike a memorandum supporting a motion and a response to an opposition is not a motion to strike matter from pleadings subject to Rule 12(f), but rather, falls under the general motion practice of Rule 7(b) which provides that an application to the court for an order shall be by motion and shall set forth the relief or order sought. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 161 (Pon. 2001).

Late filed responsive pleadings will not be stricken when the plaintiffs have failed to show any prejudice from defendants' failure to respond within 20 days of service of the plaintiffs' complaint and when the policy of deciding cases on the merits outweighs the prejudice to plaintiffs, but the defendants will be required to amend their responsive pleadings and file responses to plaintiffs' complaint that comply with Rule 8(b). Carlos Etscheit Soap Co. v. Gilmete, 10 FSM R. 436, 439-40 (Pon. 2001).

A motion to strike amended pleadings and evidence concerning it will be denied when the court has determined that justice required amendment of the pleadings and that the presentation of the action's merits would be subserved thereby. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 8 (Pon. 2004).

Rule 12(f) motions to strike may be used to strike from any pleading any insufficient defense. They cannot be used to "strike" legally insufficient claims, for which Rule 12(b)(6) is the appropriate vehicle. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

A Rule 12(f) motion to strike is neither an authorized nor a proper way to procure the dismissal of all or of a part of a complaint, or a counterclaim, or to strike affidavits. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

A defendant who is not an attorney admitted to practice before the court, may not answer on anyone's behalf but his own, and his answer will be stricken to the extent that it purports to be on other defendants' behalf. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

A defendants' "reply" to the plaintiff's reply to the defendants' counterclaims is not an authorized pleading and will be stricken since a "pleading" unauthorized under the civil procedure rules and practice may be stricken. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

Under Civil Procedure Rule 12(f), the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Since an allegation that a Congressman who signed the congressional committee report recommending that Congress reject the plaintiff's successor access agreement had a conflict of interest because he or his relatives own a competing agency on Pohnpei, is immaterial and impertinent to the question of a statute's constitutionality and may also be scandalous, that allegation will be stricken. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

A plaintiff who did not assert a cause of action against a person later named as a third-party defendant by a defendant-third-party plaintiff may move to strike the third-party claim, or for its severance, or separate trial. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

A plaintiff's motion to dismiss a third-party defendant is a motion to strike the defendants' third-party claim against that party, but whenever a motion to dismiss or to strike, or to vacate, or for a judgment on the pleadings, or for a summary judgment actually challenges the desirability of the impleader, it will be treated accordingly. Mori v. Hasiguchi, 17 FSM R. 630, 643 (Chk. 2011).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

– Pleadings – Supplemental

A court has discretion to determine whether it is just to allow a party to serve additional, supplemental pleadings upon an opposing party based on happenings since the date of the pleading sought to be supplemented. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563 (Pon. 1994).

Where a party has obtained all the relief he originally requested it is not just for a court to allow that party to supplement his pleadings to seek additional relief because he is dissatisfied with the relief he received. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563 (Pon. 1994).

Under Rule 15(d) a court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known at the time. A supplemental pleading, however, is designed to cover matters subsequently occurring but pertaining to the original cause. Herman v. Municipality of Patta, 16 FSM R. 167, 170 (Chk. 2008).

When an FSM court has not previously construed certain aspects of pleading practice that are controlled by FSM procedural rules that are identical or similar to U.S. rules, the court may consult U.S. sources for guidance. Herman v. Municipality of Patta, 16 FSM R. 167, 171 n.4 (Chk. 2008).

While leave to permit supplemental pleading is favored, it cannot be used to introduce a separate, distinct and new cause of action. A supplemental pleading is designed to obtain relief along the same lines, pertaining to the same cause, and based on the same subject matter or claim for relief, as set out in the original pleading. Herman v. Municipality of Patta, 16 FSM R. 167, 171 (Chk. 2008).

A party cannot file a civil action in anticipation of an adverse final agency decision and expect, without more, that that civil action works as an administrative appeal of the later-issued final agency decision. In order for a party to include an administrative appeal in a preexisting civil action, he must amend or request leave of court to amend his pleadings. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

A suit that was filed after the complaint was filed in this case is not part of the plaintiff's claims in this case since the plaintiff never moved for, or was granted leave to, file a supplemental pleading under Civil Rule 15(d). Mori v. Hasiguchi, 17 FSM R. 630, 641 (Chk. 2011).

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known when the original pleading was filed, while a supplemental pleading is designed to cover matters subsequently occurring but pertaining to the original cause. The amendment of pleadings is governed by Civil Procedure Rule 15(a) (and in some instances, 15(b)), while Rule 15(d) governs supplemental pleadings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

Leave to permit supplemental pleading is favored although it cannot be used to introduce a separate, distinct and new cause of action. A supplemental pleading is designed to obtain relief along the same lines, pertaining to the same cause, and based on the same subject matter or claim for relief, as set out in the original pleading. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 315 (Yap 2012).

An amended pleading, FSM Civ. R. 15(a), is designed to include matters occurring before the complaint was filed but either overlooked or not known at the time, while a supplemental pleading, FSM Civ. R. 15(d), is designed to cover matters occurring later but pertaining to the original cause. Smith v. Nimea, 19 FSM R. 163, 167 n.1 (App. 2013).

– Pleadings – With Particularity

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by FSM Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

When pleading fraud the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented and what was obtained as a consequence of the fraud. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 293 (Pon. 1995).

The extent of the particularity required when pleading fraud is guided by FSM Civil Rule 8(a), which requires a "short and plain statement of the claim." Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

Rule 9(b) requires that in allegations of fraud, the circumstances constituting the fraud be stated with particularity. The extent of particularity requires a short and plain statement of the claim. When pleading fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained as a consequence of the fraud. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not satisfied the procedural requirements for pleading fraud because she has failed to state the time, place and content of the false misrepresentation made by the defendants, the fraud cause of action must fail due to the lack of pleading with particularity as required by Rule 9(b). Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

The are a few matters which must be specifically pleaded or pled with particularity – the circumstances constituting fraud or mistake, and special damage. FSM v. Kana Maru No. 1, 14 FSM R. 368, 375 (Chk. 2006).

In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity, although a person's malice, intent, knowledge, or other condition of mind may be averred generally. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The circumstances constituting fraud must be stated with particularity. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b)

provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

A party averring fraud or mistake must plead the circumstances constituting fraud or mistake with particularity. The extent of particularity is governed by Rule 8(a). Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

– Res Judicata

Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the that action. Ittu v. Charley, 3 FSM R. 188, 190 (Kos. S. Ct. Tr. 1987).

Under common law res judicata principles, an order of dismissal with prejudice bars reassertion of the dismissed claim at a later date. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

The need for finality of judgment, which is the inspiration of the res judicata doctrine, exists within the FSM. Ittu v. Charley, 3 FSM R. 188, 191 (Kos. S. Ct. Tr. 1987).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

A fundamental principle of the common law, traditionally referred to in common law jurisdictions as res judicata, is that once judgment has been issued and the appeal period has expired or the decision is affirmed on appeal, the parties are precluded from challenging that judgment or from litigating any issues that were or could have been raised in that action. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. United Church of Christ v. Hamo, 4 FSM R. 95, 107 (App. 1989).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. United Church of Christ v. Hamo, 4 FSM R. 95, 107-08 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any

effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (App. 1989).

A party is precluded from rearguing, under another theory of liability, a claim it has already pursued to a final adjudication. Berman v. FSM Supreme Court, 6 FSM R. 109, 112 (Pon. 1993).

The doctrine of merger holds that a plaintiff cannot maintain an action on a claim or part of a claim for which he has already recovered a valid final judgment since the original claim becomes merged in the judgment and thereafter plaintiff's rights are upon the judgment, not the original claim. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 184 & n.2 (Pon. 1993).

Res judicata does not apply when different land is involved than the previous case and only one of the parties is the same. Dobich v. Kapriel, 6 FSM R. 199, 201 (Chk. S. Ct. Tr. 1993).

The doctrine of res judicata is recognized in the FSM. The primary reason for its value is repose. The general rule is that a final decision on the "merits" of a claim bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim. A plaintiff must raise his entire "claim" in one proceeding. "Claim" is defined to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 241 (Pon. 1993).

A claim for damages not proven at trial is not renewable at some later point in a different proceeding since res judicata clearly applies to the failed claim. Wito Clan v. United Church of Christ, 6 FSM R. 291, 292 (App. 1993).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

Where land is not public land and where the Land Commission and TT High Court had jurisdiction to adjudicate land claims even over public lands because the authorized adjudicatory body for public lands had not yet been created the TT High Court's land adjudication will have res judicata effect. Nahnken of

Nett v. United States (III), 6 FSM R. 508, 518 (Pon. 1994).

Only truly exceptional cases warrant an exception to the normal presumption of res judicata, and such exceptions are to be confined within narrow limits. Where there is no evidence a TT High Court judgment was obtained unfairly or worked a serious injustice an FSM court cannot grant relief from it. Nahnken of Nett v. United States (III), 6 FSM R. 508, 519 (Pon. 1994).

FSM courts are not bound to follow the precedents or reasoning of the TT High Court in deciding cases, but must respect the resolution or outcome of a case as between the parties and subject matter of the particular action adjudicated absent constitutional defect or obvious injustice such as a plain usurpation of power. Nahnken of Nett v. United States (III), 6 FSM R. 508, 519-20 (Pon. 1994).

For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. The doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Ungeni v. Fredrick, 6 FSM R. 529, 531 (Chk. S. Ct. App. 1994).

The decisions of the Land Commission are not final judgments for purposes of res judicata until after the time for appeal from a determination of ownership has expired without an appeal or after a properly taken appeal has been determined. Once the trial court granted a trial de novo on the question of ownership the Land Commission's determination of ownership ceased to exist for purposes of res judicata. Ungeni v. Fredrick, 6 FSM R. 529, 531 (Chk. S. Ct. App. 1994).

Under the doctrine of res judicata a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein. The doctrine exists to ensure efficient litigation and use of judicial resources, and to promote the reliability and certainty of judgments. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

While the doctrine of res judicata formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose apply with equal force where a litigant attempts to revisit an earlier phase of a lawsuit that has already been adjudged. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50-51 (App. 1995).

Parties are precluded from raising any issues that were or could have been raised in a previous proceeding. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

When dismissal of a related criminal case is without prejudice, there is no judgment on the merits. Therefore the doctrines of res judicata and collateral estoppel, which rely on an underlying final judgment, cannot be applied to the same matters in a civil case. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 164 (Chk. 1995).

Dismissal with prejudice of a plaintiff's prior action constitutes a judgment on the merits, which has a res judicata effect, barring the relitigation of all issues that were or could have been raised in that action. Union Indus. Co. v. Santos, 7 FSM R. 242, 244 (Pon. 1995).

Although the FSM Supreme Court is not bound to accept the findings of the Trust Territory courts, it may consider their rationale and elect to adopt their reasoning. Rulings of the FSM Supreme Court appellate division are not binding specifically upon a nonparty under the doctrine of *res judicata*, they are

binding on the court under the doctrine of *stare decisis*. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 396 (Pon. 1996).

A municipal court judgment will not be given res judicata effect when the judgment was suspended by the state court. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 492 (App. 1996).

Once a judgment has been issued and the time to appeal has expired, or the decision was affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could have been raised in that action. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

Even when an individual brings suit in a different capacity res judicata still bars the suit where the right sought to be enforced was necessarily litigated in an earlier proceeding so that entertaining the latter contention would in substance be a relitigation of the matter. Nahnken of Nett v. United States, 7 FSM R. 581, 586-87 (App. 1996).

Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudged in the first action. Nahnken of Nett v. United States, 7 FSM R. 581, 587 (App. 1996).

The FSM Supreme Court does not sit in review of Trust Territory High Court decisions and res judicata bars relitigation of its judgments. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

The doctrine of res judicata bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Damarlane v. FSM, 8 FSM R. 119, 120 (Pon. 1997).

The doctrine of res judicata bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Iriarte v. Etscheit, 8 FSM R. 231, 236-37 (App. 1998).

Res judicata bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Senda v. Semes, 8 FSM R. 484, 504 (Pon. 1998).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

A judgment that applied only to the lower, oceanside parcels of land is not res judicata to upper inland parcels. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Res judicata prevents parties to an action from relitigating an issue which has been already been fully litigated. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

Once a judgment has been issued and the appeal period has expired or the decision is affirmed on appeal, the parties are precluded from challenging that judgment or from litigating any issues that were or could have been raised in that action. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

The doctrine of res judicata generally does not operate to affect strangers to a judgment, that is, to affect the rights of those who are neither parties nor in privity with a party therein. Res judicata only applies to those who were parties to a prior litigation. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

A party to a prior litigation cannot use the doctrine of res judicata as a shield to prevent a party to a subsequent litigation (who was not a party to the prior action) from litigating an issue which was not litigated in the prior action. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When an earlier Trust Territory High Court judgment clearly stated that someone owned only half of a land parcel and the plaintiff's only claim to the land is through his purchase of that person's rights, he cannot own any more of the land than the half that the seller owned, and when that judgment was res judicata and binding on the parties to that case and all claiming under them, there was no genuine issue of fact as to whether the plaintiff owned half or all of the land. He owned only half, and the defendants were therefore entitled, as a matter of law, to a summary judgment to that effect. Bualuay v. Rano, 11 FSM R. 139, 150 (App. 2002).

If diversity of citizenship among the parties were not present and there were no other basis of jurisdiction, the FSM Supreme Court would be without subject matter jurisdiction, and any judgment it might render would be void and without any res judicata effect because all proceedings that had taken place would have been for naught, and the plaintiffs would have to start all over again in state court if they still wished to pursue the matter. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 n.1 (Chk. 2002).

A Kosrae district Trust Territory High Court judgment in a trespass action will not be set aside as invalid because it was in a designated land registration area when the registration area designation was not filed in the Kosrae district High Court and the prevailing defendants did not ask that title be issued to them, but only that the complaint be dismissed. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 172-73 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has always accepted and enforced Trust Territory High Court decisions as valid and binding, consistent with the Kosrae constitutional provisions on transition of government. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 173 (Kos. S. Ct. Tr. 2002).

The purpose of Rule 17(a) is to allow an assignee to sue in its own name, and it has, more importantly, come to also protect the defendant against later action by the party actually entitled to recover and thus insures that a judgment will have its proper final (res judicata) effect. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 354 (Chk. 2003).

The doctrine of claim preclusion (a form of res judicata) does not bar a later action when the court order denying the plaintiff's intervention (in part) in an earlier action shows that intervention was denied because the intervenor had no interest in the subject matter of the litigation, and a motion to dismiss on that ground or on the grounds that that the court lacks subject matter jurisdiction because the earlier court already had the case, or that the plaintiff is barred by his alleged "unclean hands" because he omitted mention of the earlier action allegedly to circumvent the other court's jurisdiction are therefore without merit. Rudolph v.

Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, which has been affirmed on appeal or for which time for appeal has expired. Kishida v. Aizawa, 13 FSM R. 281, 283 (Chk. 2005).

Res judicata is an affirmative defense. An affirmative defense generally must be pled by the defendant or it is waived. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Generally, a court may not raise the defense of res judicata on its own motion. However, in the interest of judicial economy, a court may properly raise the issue of res judicata when both actions have been brought in the same court. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When the court gave the plaintiff notice that res judicata might apply and an opportunity to respond and when the previous case was dismissed under Rule 41(b) for failure to prosecute and was thus an adjudication on the merits, the plaintiff is barred from relitigating or filing a new case involving the same parties and subject matter – the matter is res judicata – and the court may dismiss it. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

When a settlement agreement was reached by the parties in a case, it represents a new agreement between the parties. The failure to comply with the settlement agreement is a new claim, separate and independent of the original claim. Settlement agreements are contracts which are enforceable by a court. Therefore, the doctrine of res judicata does not apply to a settlement agreement and accordingly a motion for dismissal must be denied. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

A *res judicata* argument cannot be made about a preliminary injunction because a preliminary injunction cannot have preclusive effect since it is not a decision on the merits. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

The need for finality in litigation is particularly important for claims to land. The process can take years; the wearisome disputes lead to uncertainty and discord among relatives and neighbors; land may not be used efficiently or for its best purpose; and the parties are not free to exercise their rights. The statute covering designation of registration areas recognizes this need and provides that a justice cannot adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Heirs of Livaie v. Palik, 14 FSM R. 512, 515 (Kos. S. Ct. Tr. 2006).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been

raised in that action. Heirs of Livaie v. Palik, 14 FSM R. 512, 515 (Kos. S. Ct. Tr. 2006).

Trust Territory Court decisions are valid and binding, consistent with the Kosrae constitutional provisions on transition of government. The doctrine of res judicata applies and Trust Territory Court decisions must be upheld. Therefore, the Land Court lacked jurisdiction to receive additional evidence and issue a new decision in a case where the Trust Territory Court, in three previous cases, had established the ownership and boundaries of the land in question. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

When the appellants participated in the Land Commission proceedings and in the appeal on ownership of Parcel 069M05, they are barred from re-litigating the ownership of any portion of that parcel under the doctrine of res judicata. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. The doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Res judicata does not apply when different land is involved than the previous case and the defendants are different. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

When neither res judicata, stare decisis, nor collateral estoppel can apply another judgment to this case, it was error for the trial court to decide this case on that basis. Since the trial court finding that the two cases' facts are the same is clearly erroneous and its following legal conclusion was thus in error, the trial court should instead have made its own findings of fact and conclusions of law before reaching its decision. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on an action's merits precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The need for finality in litigation is particularly important for claims to land. The statute covering designation of registration areas, recognizes this need and provides 1) that a justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and 2) that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When an earlier civil action heard and determined the subject land's ownership and the plaintiff was in privity to one of the parties, he cannot relitigate the subject land's ownership. The earlier case determined ownership in a final judgment and, based on res judicata, the plaintiff is barred from re-litigating that case again. The Land Commission was statutorily created to address disputes about ownership and to issue a Torrens Title that is conclusively correct as to the parties and presumptively correct as to everyone else. When the plaintiff's interests are derived from a party in the Land Commission proceedings, that title is conclusive as to his interests and he is barred, under the statutorily adopted doctrine of res judicata, from relitigating an ownership claim already determined. Andon v. Shrew, 15 FSM R. 315, 321-22 (Kos. S. Ct.

Tr. 2007).

Although Trust Territory court decisions routinely relied on hand drawn maps since there was limited access to precisely drawn maps and accurate surveys, this does not mean that these earlier decisions are to be disregarded. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

The doctrine of res judicata bars repetitious litigation. Under res judicata, a final judgment on an action's merits precludes the parties or their privies from relitigating issues that were or could have been raised in that action. The doctrine of res judicata should and does apply in Kosrae. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, or fraud or collusion by a court, in addition to fraud and lack of jurisdiction have been considered grounds to ignore the finality of a judgment in the FSM. But, a judgment that is final through the lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair, or even beyond the jurisdiction does not escape the doctrine of res judicata. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

When the appellants do not argue manifest abuse of authority, fraud, collusion by the court, or a lack of jurisdiction but only argue that their own failure to timely pursue an appeal should not be held against them now, this is not sufficient grounds to overcome the finality of a judgment, particularly after more than twenty years. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

Even if the judgment in was based on the parties' agreement, when there is no suggestion of fraud, lack of jurisdiction, or other serious injustice; only that the appellants themselves failed to timely pursue their case in the past and they claim that this should not be held against them but they recognize that they had two previous opportunities to pursue their case and that their own inaction led to the prior appeal's dismissal, under these circumstances, the policy supporting finality of judgments should apply and the earlier stipulated judgment should be treated as a final judgment precluding relitigation of ownership. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

The doctrine of res judicata applies to Trust Territory High Court decisions, and when, the Kosrae State Court's order does not run afoul of the Trust Territory judgment, it will not be overturned on that basis. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

Closely related to the requirement of exhausting all administrative remedies before seeking judicial redress is the doctrine of res judicata, which bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits that has been affirmed on appeal or for which time for appeal has expired. Once a plaintiff availed himself of the administrative remedies available for claims under Pohnpei state law, he was obligated to exhaust those remedies as provided by Pohnpei state law before filing suit in the FSM Supreme Court. When the plaintiff failed to exhaust these remedies by failing to appeal the Pohnpei administrative decision, his claims for unpaid wages, overtime, wrongful termination and criminal penalties are barred as a matter of law. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

There is some authority that if a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. Otherwise the two Rule 60(b) remedies (motion or independent action) are alternative, not cumulative, remedies, and res judicata applies to successive Rule 60(b) motions and independent Rule 60(b) actions. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

The plaintiffs in an independent action have the burden to allege such fraud as to support an independent action for relief from judgment. Without the existence of the requisite fraud, an independent action in equity may not be brought. Instead, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action. Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

When it is clear that an "independent action" is only an attempt to relitigate issues already litigated and decided by a trial court and affirmed by the appellate court and when the "fraud" allegation is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, there are no material facts genuinely in dispute and, as a matter of law, the independent action is barred by res judicata. Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Once a judgment has been issued and the decision is affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could have been raised in that action. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 311-12 (Pon. 2010).

When the plaintiffs' arguments in their motion for contempt proceedings and subsequent filings were all made or could have been made during the pendency of Civil Action No. 1990-075 and the plaintiffs either failed to raise these arguments during trial or raised them and failed to succeed on the merits, the *res judicata* doctrine precludes the plaintiffs from raising these arguments again. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

A statement by a court that, to the extent that it is not dicta, is a finding of fact, a conclusion of law, and a reprimand, cannot be used as a basis for any future action when it is vacated on appeal. In re Sanction of George, 17 FSM R. 613, 617 (App. 2011).

While a default judgment is not an adjudication on the merits of a claim, it is a final judgment with res judicata and claim preclusion effect. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

The res judicata doctrine bars the parties or their privies from relitigating all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits and which has been affirmed on appeal or for which time to appeal has expired. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

Any claim based on the effect of an FSM public law's enactment on February 3, 2003, is a claim that, at the latest should have been (and certainly could have been) raised in a 2008 civil action if not earlier in a March 27, 2008 Rule 60(b) motion in another civil action. Since the FSM public law could have been raised in one of these instances (and in both of those instances, parties certainly made arguments which the public law could have been used to support), res judicata bars raising it now. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

Res judicata bars parties from relitigating all matters that were or could have been raised in prior actions, not just those that were actually raised. To escape the bar of res judicata, it is not enough that the issue has not been raised before. The issue must be one that could not have been raised before. Litigants may not sit idly by during the course of litigation and then seek to present additional defenses in

the event of an adverse outcome. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

When the movant has provided no new evidence or case law to persuade the court to amend its earlier order that all of the facts and issues he raises were heard, decided, appealed, and affirmed over 14 years ago and are precluded from being re-raised under the doctrine of res judicata his motion for the court to reconsider its order will be denied. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

Res judicata is a fundamental doctrine of our legal system. As much as every citizen is entitled to bring a claim against a defendant, citizens are entitled not to be harassed by a plaintiff once that claim is finally decided. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

Once a judgment has been issued and the decision is affirmed on appeal, the parties are precluded from challenging that judgment or litigating any issue that was or could have been raised in that action. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

When the case and the applicable issues were heard, decided, appealed, and affirmed over 14 years ago, the court will not address the questions raised in a January 10, 2011 request for clarification since they are an attempt to challenge the September 12, 1995 final judgment by introducing new issues that should have been raised in the original complaint. If new issues have arisen that could not have been litigated in the original claim, the plaintiff is entitled to file a new cause of action. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 56 (Pon. 2011).

The doctrine of res judicata stands for the notion that a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein, and it bars relitigation by parties of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits for which time for appeal has expired. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

While a stipulated judgment may not give rise to the doctrine of res judicata, a later court contemplating a civil action based on the same underlying facts may adopt the findings of fact in the stipulated judgment and any conclusions of law in the order granting the stipulated judgment, and in so doing finally adjudicate the matter. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

It was error for the trial court to not consider or even mention an earlier trial court decision about title to the same land especially when the defendant clearly asserted the applicability of that decision in his answer. The trial court must address that decision in some fashion. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

When an earlier trial court decision and the appellate opinion affirming it clearly stated in no uncertain terms that that case only concerned a tideland and did not concern the adjacent filled land; when the appellate opinion court noted that the owner of dry land is not necessarily the owner of the adjacent tideland; and when that entire proceeding was premised on the supposition that certain persons owned the filled land that they were living on, no plausible reading of the earlier decision can support a claim that it ruled that another was the owner of the filled land because only the most twisted logic could pervert that decision, in which the filled land's ownership was presumed undisputed, into a decision that awarded title of that land to that other. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

Under the res judicata doctrine, a prior action's final decision on the merits that has been affirmed on appeal, or for which the time to appeal has expired, bars a subsequent action on that same claim or any part thereof, including issues which were not but could have been raised as part of the claim. When the claims are not raised in a second action, but are raised in the original action, res judicata does not apply. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

While the res judicata doctrine formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose may apply in a lawsuit that has already been adjudged since under the doctrine

of merger, all interlocutory orders merge into the final judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

Interlocutory orders do not survive, but merge in, the final judgment. They are not accorded res judicata effect or final judgment status since interlocutory orders made in the course of an action or proceeding are not binding on the trial court when fashioning the controversy's final adjudication. This should be clear from the operation of FSM Civil Procedure Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

Preliminary injunctions do not have a preclusive effect since they are not decisions on the merits. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The doctrine of res judicata applies to Trust Territory High Court decisions, and FSM courts will apply the doctrine of res judicata to uphold and enforce Trust Territory High Court decisions. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

For the doctrine of res judicata to apply, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Under the res judicata effect as enshrined by Kosrae statute, a Land Court justice must not adjudicate

a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Kosrae Land Court must accept prior judgments as res judicata and determine those issues without evidence. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

A Trust Territory High Court case that renders a judgment about ownership of land between certain parties does not, by itself, entitle one of those parties (or a party claiming under that party) to a certificate of title for that land because there may be other persons who have claims, even better claims to ownership than the parties in the Trust Territory case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

Res judicata is listed as an affirmative defense under Rule 8(c), and, as such, it must be pleaded as an affirmative defense in an answer. However, res judicata, like the statute of limitations, is an affirmative defense that may be presented in a motion to dismiss. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

Res judicata can be raised in the context of a Rule 12(b)(6) motion when the prior action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

For a matter to be considered adjudged so that the doctrine of res judicata is applicable, there must be an existing, final judgment that has been decided on the merits without fraud or collusion by a court or tribunal of competent jurisdiction. If these requirements are met, the doctrine applies and bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

In determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

When the lawsuit is over ownership to lands adjudicated in three prior cases; when the most recent case was a dismissal with prejudice because the matter had already been litigated in a Trust Territory High Court case; and when the prior action involved the same parties or their privies, the doctrine of res judicata applies and the motion to dismiss will be granted since the prior action's preclusive effect can be determined from the complaint's face. Saito v. Siro, 19 FSM R. 650, 653-54 (Chk. S. Ct. Tr. 2015).

The res judicata doctrine stands for the proposition that a judgment entered in a cause of action conclusively settles that cause of action as to all matters which were or might have been litigated and adjudged therein, and a default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action,

where he had a far opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 241-42 (Pon. 2015).

An administratrix cannot choose to file certain claims in the initial case and given an adverse outcome, then proceed to pursue a second matter on behalf of remaining heirs; especially since the additional issues were hardly novel, but instead were readily available and capable of having been raised in the first instance. Even if a party is not collaterally estopped from relitigating a different issue between parties to a prior judgment, res judicata will still bar relitigation of those claims that might have been raised and adjudicated in the first action. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Setik v. Mendiola, 20 FSM R. 236, 242 (Pon. 2015).

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final decision on the merits and has been affirmed on appeal or for which time for appeal has expired. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the face of the complaint. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284-85 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

The *res judicata* doctrine stands for the proposition that a judgment entered in a case conclusively settles that cause of action, as to all matters that were brought or could have been litigated and adjudged therein. A default judgment constitutes a final judgment with *res judicata* and claim preclusion effect. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Like *res judicata*, the concept of jurisdiction over the subject matter is based upon public policy: one dictates the finality of judgments and the other requires litigation to be addressed in the proper forum. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The res judicata doctrine stands for the proposition, that a judgment entered in a cause of action conclusively settles that cause of action, as to all matters which were or might have been litigated and

adjudged therein. A default judgment constitutes a final judgment with res judicata and claim preclusion effect. Setik v. Perman, 21 FSM R. 31, 40-41 (Pon. 2016).

In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form. For res judicata purposes, if the later case arises out of the same nucleus of operative facts or is based on the same factual predicate as the former action, then the two cases are really the same claim or cause of action. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

The objective of the judicial process is to decide issues according to judicially determined facts and not to give a disgruntled litigant the opportunity to continue disputing them. Res judicata thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

When an action is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, it will be dismissed. Setik v. Perman, 21 FSM R. 31, 41 (Pon. 2016).

Generally, a court may not raise the res judicata defense on its own motion. But, in the interest of judicial economy, a court may properly raise the issue when both actions have been brought in the same court. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

In the Kosrae State Court, both res judicata and laches are affirmative defenses that must be asserted in responsive pleadings, and, if affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Under certain circumstances, res judicata can be raised sua sponte. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

Judicial initiative is appropriate in special circumstances. Most notably, if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. This is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Res judicata and its offspring, collateral estoppel, are not statutory defenses; they are equitable defenses adopted by the courts in furtherance of prompt and efficient administration of the business that comes before them. They are grounded on the theory that one litigant cannot unduly consume the court's time at the other litigants' expense, and that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

When raising res judicata *sua sponte*, due process requires that the court give the opposing party notice and an opportunity to respond. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

Res judicata is defined as an issue that has been definitively settled by judicial decision. It is also more narrowly defined as an affirmative defense barring a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit. Waguk v. Waguk, 21 FSM R. 60, 68-69 (App. 2016).

Res judicata actually comprises two doctrines concerning a prior adjudication's preclusive effect. The first is claim preclusion, or true res judicata, which treats a judgment once rendered as the full measure of relief to be accorded between the same parties on the same claim or cause of action. The second, collateral estoppel or issue preclusion, recognizes that suits addressed to particular claims may present issues relevant to suits on other claims. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When the plaintiff obtains a judgment in his favor, his claim "merges" in that judgment; he may seek no further relief on that claim in a separate action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment acts as a "bar." Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Under the res judicata doctrine, a judgment entered in a cause of action conclusively settles that cause of action as to all matters that were or might have been litigated and adjudged therein. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

Simply put, res judicata applies to claims and collateral estoppel applies to issues. Waguk v. Waguk, 21 FSM R. 60, 69-70 (App. 2016).

Preclusion can rest only on a judgment that is valid, final, and on the merits. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

Res judicata is a final judgment on the merits of an action that precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Implicitly, this presumes that the underlying judgment was made without fraud or collusion by a court or tribunal of competent jurisdiction. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

As with practically all broad principles of the law, the common law principle of res judicata admits of some exceptions. There are rare circumstances in which judgments will not be protected against attack. Ordinarily, a judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. Waguk v. Waguk, 21 FSM R. 60, 70 (App. 2016).

Three exceptions to res judicata are: 1) when a fundamental change in the applicable law after the first decision was rendered made application of estoppel in the second action inappropriate, 2) when there is corruption contrary to public policy, and 3) when, through deficient notice, there was a total lack of opportunity of petitioner to participate in first action affecting his legal interests. Ultimately, this is a non-exclusive list and for any equitable reason courts may refuse to apply the res judicata doctrine to avoid manifest injustice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

There is a sharp conflict about whether a judgment from which an appeal is pending has the finality requisite for the application of the res judicata doctrine. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits, and which has been affirmed on appeal or for which time for appeal has expired. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When an appeal is pending, the underlying decision is generally not considered final for the purposes of claim preclusion. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

Substantial difficulties result from a rule that a final trial court judgment operates as res judicata while an appeal is pending. These difficulties suggest that ordinarily it is better to avoid the res judicata question by dismissing the second action or staying trial and perhaps pretrial proceedings pending the resolution of the first action's appeal, but sidestepping the issue through a dismissal without prejudice or a stay pending appeal is not always wise and the court should consider the underlying circumstances of each case before making such a determination. Waguk v. Waguk, 21 FSM R. 60, 71-72 (App. 2016).

The general rule is that a final decision on the merits of a claim bars a subsequent action on that same claim or any part thereof, including issues that were not but could have been raised as part of the claim. The modern trend is to insist, first, that a plaintiff raise his entire claim in one proceeding, and second, to define claim to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

Claim preclusion cannot be invoked to bar a claim when the dismissal was for lack of subject-matter jurisdiction. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Res judicata prevents a party raising any issues which were open to litigation in the former action, where an opportunity was present to raise such claim(s) at that previous juncture. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

The modern trend with respect to the defense of former adjudication is to insist, first, that a plaintiff raise his entire claim in one proceeding, and second, to define "claim" to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

– Sanctions

It is inappropriate to deny a defendant the right to assert a statute of limitations defense by way of

punishment for tardiness in filing its answer. Lonno v. Trust Territory (III), 1 FSM R. 279, 280 (Kos. 1983).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM R. 170, 174-75 (App. 1991).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under her own name and as the real party in interest. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

An objection to the amount of a monetary sanction cannot be raised for the first time on appeal. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

A sanction of $135 is not an abuse of discretion because it is presumptively within the ability of an attorney in private practice to pay. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

A court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

A finding of bad-faith conduct is necessary before a court can use its inherent powers to sanction. In re Sanction of Woodruff, 10 FSM R. 79, 85-86 (App. 2001).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney's personal actions or omissions, not on the court's frustration, no matter how justified, with previous counsel's actions or omissions, or with a recalcitrant client's actions or omissions that are beyond an attorney's control or influence. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court's work was done. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires heightened certainty. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The trial court abused its discretion by its failure to make a specific finding of bad faith, its apparent use of an improper standard of proof, and because the short time span for which the attorney was personally responsible for the case therefore, as a matter of law, he could not be personally sanctioned using the court's inherent powers. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The standard for the imposition of sanctions using the court's inherent powers is extremely high. The court must find that the very temple of justice has been defiled by the sanctioned party's conduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 456 (Chk. 2004).

It is ordinarily inappropriate to look beyond the clearly delineated procedure of Rule 37 for the imposition of sanctions in the discovery context. Generally, Rule 37 is the sole source of sanctions for the discovery violations described in that rule. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The question before an appellate court is not whether the appellate court would have imposed the sanction the trial court did, but whether the trial court abused it discretion in doing so. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

The trial court may impose fee sanctions on the party, attorney, or trial counselor advising improper conduct or both of them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When the court ordered that during the pendency of appellate proceedings, a defendant would make

payments of $500 a month to the plaintiffs' counsel as part of the conditions the parties agreed to in order for the court to stay trial proceedings while appellate review was pending, but no appellate proceedings were ever pending and when on November 1, 2005, at the plaintiffs' request, the court vacated the stay order, the defendant was not under any court-ordered obligation to pay $500 a month for any month after October 2005 and will not be sanctioned for his failure to do so. Amayo v. MJ Co., 14 FSM R. 355, 360 (Pon. 2006).

The court will not award attorney's fees of $200 an hour, counsel's usual hourly rate on Guam because FSM court awards of reasonable attorney's fees are based on the customary fee in the locality in which the case is tried. One hundred ten to one hundred twenty dollars an hour would be in the range reasonable for a case tried on Pohnpei. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Trial preparation is time that counsel would need to do prepare before any eventual retrial in the case, and so should not be part of any sanction award relating to a stay. Amayo v. MJ Co., 14 FSM R. 355, 361-62 (Pon. 2006).

No sanctions will be awarded under Rule 16(f) because the FSM Supreme Court Rules of Civil Procedure do not contain a Rule 16(f) or an equivalent of Rule 16(f) of the U.S. Federal Rules of Civil Procedure. The rule does not exist. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

When the court has not found that either the defendant or his counsel acted in bad faith when they initially requested the stay for appellate review, the court cannot use its inherent powers to impose sanctions because a finding of bad-faith conduct is necessary before a court can use its inherent powers to sanction. Amayo v. MJ Co., 14 FSM R. 355, 363-64 (Pon. 2006).

The court's power to award attorney's fees for vexatious conduct, will usually be exercised to include an attorney's fees award as a part of damages in a final judgment, not to impose sanctions at a pretrial stage. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. For a case tried on Pohnpei, the court will award fees on the basis of $125 an hour. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

When a review of the billing attachment reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at $125 an hour for a total of $450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

A Guam gross revenue tax or a GRT equivalent cannot be included in a court-awarded attorney's fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 102 (Yap 2010).

A trial court order stating that future sanctions "shall" be in the amount of $150 or greater and shall include contempt proceedings, prejudges the extent and severity of future violations before they occur and will be vacated since a court must hear before it condemns. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

Sanctions of $312.50 in attorney's fees imposed on "Damarlane" were imposed, jointly and severally, on all of the plaintiffs since the trial court began its order with a statement that the plaintiffs, Kadalino Damarlane et al., would be referred to as "Damarlane" throughout the rest of the sanction order and thus the sanction imposed on "Damarlane" was imposed on all of the plaintiffs collectively. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney's research and drafting of a brief filed by another counsel for represented parties does not constitute the ethical lapse of "ghostwriting." In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 2014).

A motion to reconsider the imposition of sanctions on counsel will be denied when the movants have not demonstrated that reconsideration is necessary in order to correct a manifest error of law or fact on which the judgment is based; when their timeliness argument should have been raised earlier and so will

not be considered on a motion for reconsideration; when their alternative argument was thoroughly discussed and rejected in an earlier order; and when they do not cite any authority in support of their contention that the court should modify its sanctions order in light of the harm to counsel's professional reputation. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

When a defendant has not provided sufficient answers to the plaintiff's discovery request as ordered by the court, the defendant and her counsel may be jointly and severally liable for the plaintiff's expenses incurred in bringing a second motion to compel is granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

When the filing of a seemingly independent action is replete with inaccurate recitations of the parties and contains specious, untimely causes of action that challenge the formulation and enforcement of a defaulted loan on which a judgment had been entered, the conduct exhibited by the plaintiffs' attorney is vexatious under a clear and convincing analysis; thereby tantamount to bad faith. Setik v. Mendiola, 20 FSM R. 320, 327-28 (Pon. 2016).

– Sanctions – Rule 11

An attorney shall be sanctioned under FSM Civil Rule 11 when it is apparent to the court that counsel had no arguable basis in fact or law in bringing a motion or pleading. Berman v. Kolonia Town, 6 FSM R. 242, 245-46 (Pon. 1993).

A motion will be regarded as frivolous (and sanctionable) if at the time of filing it offered no reasonable possibility of relief. Berman v. Kolonia Town, 6 FSM R. 242, 246 (Pon. 1993).

Although the language of FSM Civil Rule 11 directs that the court shall impose sanctions on an attorney when a violation of the rule has been shown, the nature and amount of penalty is left to the court's discretion. Berman v. Kolonia Town, 6 FSM R. 242, 247 (Pon. 1993).

Rule 11 mandates a reasonable inquiry by the attorney as to whether the pleading or motion is well grounded in fact and warranted either by current law, or, alternatively, by a good faith argument that that is what the law ought to be. A bad faith argument, although still sanctionable, is thus not the only action sanctionable under this provision. A purely frivolous, good faith argument is also sanctionable. Berman v. Kolonia Town, 6 FSM R. 433, 435 (App. 1994).

The purpose of Rule 11 is to deter baseless filings. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

It is an abuse of discretion to deem a motion frivolous and sanctionable when it was a case of first impression in this jurisdiction, no contrary authority can be cited from another jurisdiction, and no authority was cited by the trial court, and where the appellant made a good faith argument for the extension of existing law. Berman v. Kolonia Town, 6 FSM R. 433, 436-37 (App. 1994).

An argument, although plainly incorrect, may be insufficiently frivolous as to warrant sanctions under FSM Civil Rule 11. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

An attorney may be sanctioned under Rule 11 when, although citing the correct rule, she makes no attempt to demonstrate how the circumstances meet the provisions of that rule, her position is contrary to her earlier position, and she repeatedly misstates the court's conclusions; when a motion for reconsideration raises matters already decided and offers no new arguments; and when everything a posttrial motion to amend the complaint seeks to add are matters already adjudicated against the plaintiffs. Damarlane v. United States, 7 FSM R. 350, 356-57 (Pon. 1995).

Rule 11 sanctions can be granted only for violating one of the three elements of Rule 11 – is the document 1) signed, or 2) is to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it well grounded in fact and warranted by law, or 3) is it interposed for any improper purpose such as delay or harassment. Damarlane v. FSM, 7 FSM R. 383, 384 (Pon. 1996).

Sanctions will not be imposed for a motion not well-researched and supported only by the language of what most likely is the wrong rule of civil procedure when it was not a deliberate attempt to harass and increase the cost of litigation. Lavides v. Weilbacher, 7 FSM R. 400, 404 (Pon. 1996).

Sanctions will be imposed for the assertion of a long list of inapplicable affirmative defenses for which no reasonable inquiry was conducted. Sanctions may be both monetary and non-monetary. Lavides v. Weilbacher, 7 FSM R. 400, 406 (Pon. 1996).

An attorney who argues that his motion need not be served on an opposing party or an attempt be made to obtain that party's consent to the motion because the opposing party has defaulted when no default judgment has been entered may be sanctioned. Bank of the FSM v. Bergen, 7 FSM R. 595, 597 (Pon. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

Rule 11 requires that an attorney undertake a reasonable inquiry before signing to determine whether a pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous, though good faith, argument is sanctionable. A reasonable inquiry means an inquiry reasonable under all the circumstances of the case. An attorney whose answer copied the list of affirmative defenses directly from Civil Rule 8(c), giving no thought to the applicability of any one defense to the particular facts or issues of the case, has not made a reasonable inquiry. In re Sanction of Berman, 7 FSM R. 654, 656-57 (App. 1996).

A litigant pleading non-frivolous along with frivolous claims cannot expect to avoid all sanctions under Rule 11 merely because the pleading or motion under scrutiny was not entirely frivolous. In re Sanction of Berman, 7 FSM R. 654, 657 (App. 1996).

Merely because a motion is legally deficient in some respect does not make it a frivolous motion subject to sanctions. Damarlane v. FSM, 8 FSM R. 10, 13 (Pon. 1997).

An attorney, before signing a document, must undertake a reasonable inquiry to determine whether the document is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. United States, 8 FSM R. 45, 57-58 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney's subjective intent. Damarlane v. United States, 8 FSM R. 45, 58 (App. 1997).

A Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his own name, and as the real party in interest. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Rule 11 sanctions are usually sought by a party, but a court may impose sanctions on its own initiative. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

Arguing the facts is different from representing the facts as being what they are not. That is simple prevarication sanctionable under Civil Procedure Rule 11. Kosrae v. Worswick, 9 FSM R. 536, 539 (Kos. 2000).

An attorney's signature constitutes the signer's certificate that the signer has read the pleading, motion, or other paper and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a party has contended that plainly relevant information is not relevant, and has done so in the face of clear law that is contrary to its position, the question becomes whether the party's relevancy argument is so wide of the mark as to be frivolous. This is a prima facie case of a Rule 11 violation. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

Counsel, who also signed another party's motion even though it did not involve a live dispute with respect to his client, should be prepared to address why at least nominal sanctions should not be imposed against him in the event that a Rule 11 violation occurred. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

Sanctions under Kosrae Rule 11 are applicable only to legal counsel, not pro se litigants. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

A court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58 (Kos. S. Ct. Tr. 2002).

The Kosrae Rule 11 provides that an offending attorney may be subject to appropriate disciplinary action for a wilful violation of the rule. FSM Rule 11 on the other hand contains no wilfulness requirement and provides that the court must impose an appropriate sanction. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58 (Kos. S. Ct. Tr. 2002).

A party seeking sanctions under the Kosrae Rule 11 must show that the filer of the offending pleading knew that the pleading violated the rule and intended, or meant, to violate the rule by filing it. Kosrae Rule 11 is reserved for instances where the filer deliberately presses an unfounded claim or defense. The filer's knowledge of the pleading's defects and his intent to violate the rule, along with the other elements of a Rule 11 violation, must be shown by clear and convincing evidence. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 58-59 (Kos. S. Ct. Tr. 2002).

Because Kosrae Admission Rule 4(2) provides that the Chief Justice may, after notice and hearing, discipline an attorney for violation of the Admission Rules, a Rule 11 motion for sanctions may be denied without prejudice to the initiation of the appropriate disciplinary proceedings under Rule 4(2). Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59 (Kos. S. Ct. Tr. 2002).

To the extent that the hearing requirement of Practice Rule 4(2) has any application to a motion under

Kosrae Civil Procedure Rule 11, it means that the court may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submissions from the affected parties. Kosrae v. Seventh Kosrae State Legislature, 11 FSM R. 56, 59 (Kos. S. Ct. Tr. 2002).

When there are no monetary Rule 11 sanctions against party's counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

Accurate citations to legal authority are required by Rule 11. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 11 sanctions may be imposed on a party or his attorney or both. Since the constitutional guarantee of due process requires that the person, upon whom a sanction might be imposed, must be given notice of that possibility and the opportunity to be heard before any sanction can be imposed, before the court could consider the sanctions motion as a whole, the party's former counsel, who had withdrawn before the sanctions motions were filed, had to be given notice that Rule 11 sanctions might be imposed and an opportunity to be heard on the issue as it might relate to him. The court therefore ordered that the motion be served on former counsel, and that the clerk serve a copy of the court order on him. Amayo v. MJ Co., 14 FSM R. 355, 359 (Pon. 2006).

Under Rule 11, a party's or an attorney's signature on a paper is the signer's certification that, among other things, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. When a paper is signed in violation of Rule 11, the court must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Under Rule 11, the court's discretion includes the power to impose sanctions on the client alone, solely on counsel, or on both. This is desirable because there are circumstances in which one of these actions is more appropriate than the other two. For example, when the offending conduct relates to work that lies within the counsel's supposed competence, especially when it is beyond the client's understanding, it is the former who should be sanctioned, not the latter. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Since seeking appellate review and a stay may be characterized as work that lies within the counsel's supposed competence and could be beyond the client's understanding, if Rule 11 sanctions were imposed, counsel rather than client may be the appropriate person to sanction. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

Although bad faith is not a necessary element for Rule 11 sanctions, bad faith will, of course, subject a party, the party's attorney, or both to Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.3 (Pon. 2006).

When the defendant fulfilled the portion of the bargained-for stay that the stay required him to do personally (by making the $500 monthly payments) and when he cannot be expected to grasp that while review of the recusal issue could be sought through an original action in the appellate division by way of a petition for an extraordinary writ (of prohibition), appellate review of the other issues was dependent on the trial court's Appellate Rule 5(a) certification and then on the appellate court's exercise of its discretion to permit an appeal, it appears that if Rule 11 sanctions are to be imposed, they must be imposed on the

defendant's former counsel. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

Withdrawal does not immunize counsel from Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.4 (Pon. 2006).

For Rule 11 purposes, counsel's conduct should be appraised at the time the signed paper was filed. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

Counsel cannot be sanctioned for merely being wrong about the law or having an exaggerated sense of the probability of success on the line he was pursuing. But counsel cannot avoid the sting of Rule 11 sanctions under the guise of a pure heart and empty head. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

A court may decline to impose Rule 11 sanctions where the mistake is inadvertent, although many cases hold that sanctions are mandatory when a Rule 11 violation is found. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. The decision to impose or not impose Rule 11 sanctions is addressed to the trial court's discretion. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon. 2006).

An answer that denies all of a complaint's factual allegations is an answer in the nature of a general denial. General denials, while disfavored, are permissible when proper, but are subject to the obligations of honesty set forth in Rule 11. Counsel are cautioned that pleadings that deny facts known by the pleader to be true subject counsel to possible sanctions under Rule 11. Albert v. George, 15 FSM R. 574, 577 n.1 (App. 2008).

When the plaintiffs believed in good faith that a claim existed and that this claim fell under the existing law of contracts; when their small claims lawsuit was not used to harass or cause unnecessary delay and is grounded in fact; and when the plaintiffs' claim is not frivolous, the defendant's claim for sanctions will be denied. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 642 (Kos. S. Ct. Tr. 2009).

Rule 11 provides for sanctions against an attorney for filing frivolous and baseless motions. Rule 11 requires that before affixing her signature to a document, an attorney must undertake a reasonable inquiry to determine whether the pleading, motion, or other paper is well-grounded in fact and warranted either by current law, or a good faith argument of what the law ought to be. A purely frivolous argument, even if made in good faith, may be sanctionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 & n.2 (Pon. 2010).

An attorney may be sanctioned for raising matters already decided and offering no new arguments. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

When the court is generally inclined to grant the defendants' motion for sanctions on the grounds of *res judicata* and the complete lack of merit in the plaintiffs' arguments but recognizes a possibility, however remote, that the plaintiffs genuinely and inadvertently misconstrued the relationship between the March 15, 1991 preliminary injunction and the May 17, 1991 order, the court, in its discretion, may deny the defendants' motion for sanctions and warn the plaintiffs that it may not look so charitably upon future filings of this type and caution their counsel to carefully review Civil Rule 11 and its requirements before filing further motions in the case. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 312 (Pon. 2010).

Rule 11 requires that every submission by a party represented by an attorney must be signed by an

attorney of record. The attorney's signature is a certificate by the signer that, to the best of the signer's knowledge, information, and reasonable belief, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and that it is not submitted for any improper purpose. If a submission is signed in violation of Rule 11, the court, upon motion or upon its own initiative, must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings and the decision to impose them is addressed to the trial court's discretion. When a claim is asserted by the same plaintiff, represented by the same counsel, in an action involving the same land, repeatedly asserting previously denied theories, the court will consider that claim frivolous. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

Sanctions will not be imposed when the plaintiff has failed to show that the defendant's arguments are either unfounded or in bad faith since the res judicata doctrine was an affirmative defense available to it as the matter was final over 14 years ago. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

Sanctions will not be imposed on the defendant for its attempt to interpret the plaintiff's motivations and objectives because that is not a sanctionable offense. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 57 (Pon. 2011).

Sanctions will be imposed on the plaintiff when plaintiff's counsel has deliberately distorted the facts, orders, opinions, and judgments of both the trial court and the appellate division throughout the matter's life and afterlife; when such cherry-picking of the facts and language from the opinion might have been excusable since that opinion was over 20 years old had some other party represented by some other counsel done so; when less than one year ago, the court reminded the plaintiff that the May 17, 1991 order did not require the defendant to take any particular action and that he had incorrectly characterized the court's actions; when this pattern of distortion dates as far back as counsel's use of inapplicable laws in a June 2, 1994 amended pretrial statement; and when the April 30, 1992 appellate division opinion and the trial court's December 29, 2010 order have twice explained that the May 17, 1991 order has no weight but counsel continues to argue the same inapplicable issues and facts. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 52, 58 (Pon. 2011).

Sanctions will be denied when the supplement complained of was a request for ruling on a renewed motion and it did not cause unnecessary delay because the party seeking sanction spent only one hour and ten minutes in responding to the supplement. Berman v. Pohnpei, 18 FSM R. 67, 74-75 (Pon. 2011).

Sanctions will be denied when the arguments complained of were clearly supported by law despite the movants' singular inability to comprehend that. Berman v. Pohnpei, 18 FSM R. 67, 75 (Pon. 2011).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Rule 11 sanctions can be imposed only for violating one of the three elements of Rule 11 – 1) is the document signed, or 2) is it, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, well grounded in fact and warranted by law, or 3) is it interposed for any improper purpose such as delay or harassment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

When a paper is signed in violation of Rule 11, the court must impose upon the person who signed it, a represented party, or both, an appropriate sanction. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings, and although bad faith is not a necessary element for Rule 11 sanctions, it will subject a party, the party's attorney, or both to Rule 11 sanctions. A good-faith argument that is purely frivolous is also sanctionable. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Although Rule 11 sanctions cannot be imposed for merely being wrong about the law or having an exaggerated sense of the likelihood of success, the sting of Rule 11 sanctions cannot be avoided under the guise of a pure heart and an empty head. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

Sanctions were proper when, using an objective standard, a reconsideration motion was without merit and the movants could never certify that the motion, ostensibly to enforce no longer valid 1991 interlocutory orders as decisions and orders which were the outcome of the litigation, was well grounded in fact and warranted by existing law or a good faith argument for its extension, especially since the trial court had earlier rejected the same claim. The 1991 interlocutory orders were not decisions and orders which were the litigation's outcome since the litigation's outcome was that the 1991 temporary orders ceased to be valid. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Sanctions are proper when, even though the plaintiffs may have a valid claim against the defendants, such a claim cannot be enforced by moving to hold the defendants in contempt of an interlocutory order that has ceased to have the force of law and which was issued in a case that not only has been closed for well over a decade but which also resulted in a final judgment, affirmed on appeal, adverse to the plaintiffs. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

The discretion to not impose sanctions when a Rule 11 violation occurs is very limited, and whether a sanction is imposed should not be dependent on what month of the year the Rule 11 motion is decided. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 n.3 (App. 2012).

A party's written Rule 11 motion constituted notice that it was seeking sanctions in the form of attorney's fees and the adverse parties' written opposition was their opportunity to be heard and they were heard on the papers. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a court (sua sponte) makes its own motion, it must give the parties notice and an opportunity to be heard before it grants or denies its own motion just as when a party makes a motion, the other party generally must be given notice and an opportunity to respond before the court rules. This does not include motions that the rules permit to be made *ex parte* or without notice, but motions for sanctions always require notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 & n.4 (App. 2012).

Barring future filings in a case or the filing of new cases in the same matter can be proper Rule 11 sanctions. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When the defendants asked the plaintiffs' counsel to withdraw the offending motion or it would seek Rule 11 sanctions and their later Rule 11 motion was precise about what it sought sanctions for, the plaintiffs had the appropriate notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

As for the plaintiffs avoiding future sanctions, the order cannot be too vague since they are barred from filing any papers in Civil Action No. 1990-075 without first obtaining leave of court and have been since

December 1995. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

The signature required by Rule 11 does not certify that the signer prepared or wrote the document. It only certifies that the signer has read it and that the signer has made a reasonable inquiry into whether it is well grounded in fact and warranted by law. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

An attorney does not violate Rule 11 by signing and filing a brief drafted by another attorney. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Rule 11, by its terms, only requires that a filing be signed by at least one attorney or trial counselor of record in that counsel's individual name. It does not require that all of the attorneys who worked on the filing sign it. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Sanctions for violating Rule 11 can only be imposed on the counsel who signed the filing, not on other counsel. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

If a submission is signed in violation of Rule 11, the court must impose an appropriate sanction on the person who signed it, a represented party, or both. The decision whether to impose sanctions for violation of Rule 11 on the attorney or the client is at the court's sound discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

The purpose of Rule 11 sanctions is to deter baseless or frivolous filings. Both bad faith arguments and frivolous, good faith arguments are sanctionable. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

Rule 11 Sanctions can be imposed when 1) a pleading, motion, or other paper is not, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry well grounded in fact and warranted by law or a good faith argument for extension, modification, or reversal of existing law, or 2) when the document is for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014).

A legal contention that is made in spite of the obvious preclusive effect of a judgment in prior litigation is not warranted by existing law. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 n.2 (Pon. 2014).

An argument for a change of law is frivolous if no reasonable argument can be advanced for the change. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

The plaintiffs' arguments are all the more frivolous when they fail to advance any argument for a modification of the law, and instead argue for a modification of the law as if it were existing law. Such an approach would not necessarily give rise to Rule 11 sanctions if a reasonable argument for modification of the law could be made, but not when it is impossible to advance a reasonable argument for modification of

the appellate precedent. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 372 (Pon. 2014).

When the plaintiffs' complaints seek the same relief that had previously been denied by both the trial and appellate divisions, their efforts to stop the bank's judgment enforcement actions through this case represent frivolous and vexatious efforts by the same parties that have previously failed in both trial and appellate divisions, and when they were aware at the time of filing that these complaints offered no reasonable chance of relief, the court must infer that the complaints were filed for the improper purposes of causing unnecessary delay of bank's judgment enforcement actions and for causing needless increase in its litigation costs. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

FSM Civil Rule 11 directs that the court shall impose sanctions when a violation of the rule has been shown, leaving the nature and the amount of penalty to the court's discretion. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

It is within the court's discretion to apportion the sanction between an attorney and his client, and the court will impose a sanction on the attorney rather than his client when the offending conduct relates to work that lies within the supposed competence of counsel. The decision to seek a writ of prohibition from a court despite binding precedent that speaks to that court's lack of jurisdiction is assuredly work that lies within the supposed competence of counsel. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

When it is clear that the complaints were not supported by law and were filed for the purpose of delay or harassment, the court will grant the opposing party's motion for sanctions in the form of costs including reasonable attorney's fees. These sanctions shall be imposed against the plaintiffs' counsel of record. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 373 (Pon. 2014).

Mere disagreement with the court's application of the standard for imposing Rule 11 sanctions does not support a motion to reconsider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

An attorney's signature on a filing constitutes a certificate by the signer that the signer has read the filing and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 580-81 (Pon. 2014).

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

Imposition of Rule 11 sanctions on the defendants will be denied when the defendants could have labored under the impression that they conceivably might, if they prevailed in their entreaties for relief from previously issued judgments, still maintain an interest in the property whose development they sought to enjoin. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 106 (Chk. 2015).

No Rule 11 sanctions will be imposed when the court cannot say that the plaintiff's attempt was not a good faith argument for the extension, modification, or reversal of existing law, although that would not hold true if there are any future such attempts of the same nature. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A court retains jurisdiction over a Rule 11 motion for sanctions even though the action has been dismissed. Setik v. Mendiola, 20 FSM R. 320, 322, 328 (Pon. 2016).

In determining the appropriateness of meting out Rule 11 sanctions, a two-pronged analysis must be undertaken regarding the conduct of plaintiffs' counsel in bringing the subject cause of action. Under Rule 11, the court must determine whether: 1) the pleading was signed, to the best of this attorney's knowledge, information and belief, formed after reasonable inquiry, well grounded in fact and warranted by law and 2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or to increase the litigation's cost. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

Counsel's conduct is viewed under an objective standard, as opposed to assessing the attorney's subjective intent. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

A signatory's conduct will be examined at the time the relevant document was executed. Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

When counsel chose to pursue an independent action in the wake of an unsuccessful Rule 60(b) motion for relief from judgment and when counsel had actual knowledge of the existing law prohibiting that, this behavior would belie any semblance of having conducted a "reasonable inquiry" into whether the pleading was "warranted by existing law." Setik v. Mendiola, 20 FSM R. 320, 324 (Pon. 2016).

A "reasonable inquiry" implies being conversant with all the circumstances of the case. Setik v. Mendiola, 20 FSM R. 320, 326 (Pon. 2016).

A belated independent action predicated on an erroneous factual perception that the December 24, 2013 judgment and ensuing July 1, 2015 order did not exist, refutes any indication that the plaintiffs' counsel undertook the requisite "reasonable inquiry," about whether the independent action's complaint was "well grounded in fact." Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

When a complaint was brought as an independent action attacking a judgment that had already been unsuccessfully challenged twice, the attorney may be sanctioned for raising matters already decided and offering no new arguments. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

The underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings. Setik v. Mendiola, 20 FSM R. 320, 327 (Pon. 2016).

Rule 11 sanctions will be imposed when the court finds that a "reasonable inquiry" into whether the complaint was "well grounded in fact and warranted by existing law" was wanting and when the pleading was "interposed for an improper purpose," namely, to cause unnecessary delay. Setik v. Mendiola, 20 FSM R. 320, 328 (Pon. 2016).

Whether to impose Rule 11 sanctions is subject to the trial court's discretion. As such, an abuse of discretion standard is utilized to review lower court decisions that address the propriety of these sanctions. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

In addition to appeals of Rule 11 sanction orders being reviewed under an abuse of discretion standard, an objective standard is employed, as opposed to assessing an attorney's subjective intent. Since the underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings, an appellate court will objectively scrutinize the lower court's analysis about the merits of imposing Rule 11 sanctions. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26-27 (App. 2016).

An attorney is duty-bound, in accordance with Rule 11, to conduct due diligence before affixing his or her signature to a document. Under Rule 11, a court must determine whether the document is signed and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, is well grounded in fact, as well as warranted by law and not interposed for any improper purpose such as delay or harassment. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

A reasonable inquiry entails an inquiry that is reasonable under all the circumstances. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 27 (App. 2016).

A court may decline to impose Rule 11 sanctions for an understandable mistake where the mistake is inadvertent. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

A signatory's conduct will be examined at the time the relevant document was executed. It is not necessary that an investigation into the facts be carried to the point of certainty. The investigation need merely be reasonable under the circumstances. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

Simply because, when the trial court denied the imposition of Rule 11 sanctions on the bank's attorney, it did not specifically articulate its reasoning for not imposing Rule 11 sanctions on the bank, does not necessarily imply that due consideration was lacking, in terms of such a prospect. A trial court need not state why it did not consider an issue or fact, it need only make a finding of such essential facts, as provide for a basis for the decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

When there was more than ample evidence that the bank, as well as its attorney, conducted due diligence and thereby, reasonable inquiry into the documents' signatories, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

Recognition of a notarized signature as indicia of reliability, is consistent with the governing statute(s), the rules of evidence, and case law; thereby meeting the reasonable inquiry requirement set forth in Rule 11. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

– Sanctions – Rule 37

Under Rule 37(b), if a party fails to obey an order to permit or provide discovery, a court may order, among other things, that facts be designated as admitted, that the disobedient party not be allowed to support or oppose designated claims, that pleadings or parts thereof be stricken, or that a party be held in contempt of court. In addition, or in lieu of any of these, the court shall require a disobedient party, or the party's attorney or trial counselor, or both, to pay reasonable expenses (including attorney's fees) caused by the disobedient party's failure to obey the court's order. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 290-91 (Pon. 1998).

Instead of ordering that certain facts be designated as admitted as requested by a party that had previously obtained a court order requiring another party to comply with its discovery requests, a court may order that for failure to comply with that discovery order that the disobedient party pay all of the moving party's reasonable expenses in preparing, filing, and defending its motions for sanctions. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 291 (Pon. 1998).

When a trial court has determined a party's liability for an attorney's fees sanction but has not determined the amount of that liability, it is not a final order because the trial court could not execute on the order when the amount of attorney fees had not been fixed. Only once the fees have been fixed will the order become final and appealable. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

FSM Civil Rule 37(b)(2) gives the court the authority to levy sanctions against a party, including dismissal, for failure to obey a discovery order, and Rule 41(b) allows the court to dismiss a plaintiff's complaint for failure to comply with a court order. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a party who has prevailed on a motion to compel discovery. Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submission from the affected parties. Adams v. Island Homes Constr., Inc., 10 FSM R. 430, 432 (Pon. 2001).

When a party fails to comply with an order compelling discovery under Rule 37(a), the court may order that the matters regarding which the order was made or any other designated facts will be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 474 (Pon. 2001).

When a defendant has not complied with all of the discovery requests as directed in a court order, the court will consider sanctions, including Civil Rule 37(b)(2) sanctions that designated facts will be taken to be established for the purposes of the action in accordance with the plaintiff's claim, and that defendant ought to be aware that deeming certain facts established is tantamount to entering a default judgment. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

When a party has yet to comply with the court's discovery order and discovery has been outstanding for an extended period, then that is one fact that the court will consider when contemplating sanctions if compliance is not forthcoming. AHPW, Inc. v. FSM, 10 FSM R. 507, 508 (Pon. 2002).

Pohnpei may be held liable for discovery sanctions of motion related expenses such as attorney's fees, but the FSM is exempt from such sanctions under Rule 37(f). AHPW, Inc. v. FSM, 10 FSM R. 507, 509 (Pon. 2002).

Any party may serve on any other party a request to permit entry upon designated land or other property in the requested party's possession or control for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), and if the requested party fails to permit inspection as requested, the party seeking discovery may move for an order compelling inspection in accordance with the request, and if granted, the court may, after opportunity for hearing, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees. Ambros & Co. v. Board of Trustees, 10 FSM R. 645, 647 (Pon. 2002).

When a motion to compel discovery is either granted or denied, the court must, after opportunity for hearing, award to the prevailing party its reasonable expenses incurred, including attorney or trial counselor fees, unless the court finds that the non-prevailing party's position was substantially justified or that other circumstances make an award of expenses unjust. The opportunity for hearing is complied with by considering written submissions from the affected parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 228 (Pon. 2002).

In addition to the sanction of fees and expenses provided for in Rule 37(a)(4), Rule 37(b)(2)(A) provides that the court may enter an order refusing to allow the disobedient party to oppose designated claims or defenses. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

The court may order as a sanction that the matters regarding which an order compelling discovery was made or any other designated facts will be taken to be established for purposes of the action in accordance with the claim of the party obtaining the order. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a party's refusal to produce a document in discovery was sufficiently egregious that the facts necessary to establish the party's liability to the plaintiffs are deemed established, the only issue remaining for trial will be that of damages. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a court has imposed Rule 37 discovery sanctions and finds that Rule 11 has also been violated,

it may make the sanctions imposed under Rule 37 also stand as those imposed under Rule 11. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

When a party's record of discovery obduracy speaks for itself, the court may award attorney's fees and expenses as reasonable under all the facts and circumstances. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 447 (Pon. 2003).

When, given the scope and depth of the discovery disputes generated by a party's conduct, the court, in awarding fees to opposing counsel, will not find several billing entries showing work by both attorneys working together to be inordinate. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

In order to achieve the end of discouraging obstructionist discovery conduct, the "expenses," that are imposed as a sanction for failure to comply with discovery is to be given a more expansive meaning than the "costs" that are awarded as part of a civil rights judgment. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

When a party's actions necessitated discovery sanction attorney fee awards, that party cannot complain about being held to account for them under Rule 37(a)(4). Such awards are not limited to the 15% generally awarded in collection cases. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 448 (Pon. 2003).

Rule 37(b) provides that the court may impose sanctions based upon a party's failure to comply with a court order to compel, and, pursuant to Rules 36(a) and 37(b)(2)(A), the court may deem the facts alleged in a request for admission of facts as admitted for the purposes of the action. Tolenoa v. Timothy, 11 FSM R. 485, 486 (Kos. S. Ct. Tr. 2003).

If a motion to compel discovery is granted, the court shall, after opportunity for hearing, require payment of the moving party's reasonable expenses incurred in obtaining the order, including attorney or trial counselor fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 509 (Pon. 2003).

When a defendant has not paid a court-ordered sanction for costs related to the plaintiff's motion to compel discovery, the court may order that, if the sanction is not paid immediately, the defendant's answer be stricken. Actouka Executive Ins. Underwriters v. Walter, 11 FSM R. 508, 510 (Pon. 2003).

If a motion to compel answers to discovery is granted, the court must, after opportunity for hearing, require the party (or the party's attorney, or both) whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When none of the arguments put forward in opposition to a motion to compel discovery establish that there was any legitimate justification for the opposition to the plaintiffs' motion to compel or the failure to timely respond to the interrogatories, the defendant should pay the plaintiffs the reasonable expenses incurred in obtaining the order compelling interrogatory responses. Primo v. Semes, 11 FSM R. 603, 606 (Pon. 2003).

When efforts to settle the case, or set a schedule for discovery, motions and trial, or proceed with a hearing on the sanctions motion, were rendered impossible by the unexplained absence of parties, the court, under FSM Civil Rule 37(d), has the authority to strike the parties' answer to third-party complaint or

enter a default against them. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 232 (Pon. 2003).

Failure to attend depositions, court hearings and conferences, and failure to answer discovery requests, are impermissible acts that subject the non-complying party to sanctions, ultimately including punishment that is as severe as imprisonment for acts that are deemed in contempt of court. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 232 (Pon. 2003).

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

If a motion for discovery sanctions is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 497 (Chk. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When the defendant engaged in the dubious practice, at best, of filing contingent motions concerning discovery six months after the court-ordered discovery cutoff date and did not file his pretrial motions within the time specified and since, under Rule 37(a)(4), the court "shall" award attorney's fees against the party moving to compel discovery if the motion is denied and the court made no finding that the motion was substantially justified or that other circumstances make an award of expenses unjust, no reason exists under Rule 37(a)(4) why attorney's fees should not be awarded. The plaintiff's fee request will be granted. Amayo v. MJ Co., 13 FSM R. 242, 247 (Pon. 2005).

A party that prevails on a motion to compel discovery is usually entitled to reasonable attorney's fees and costs as a sanction for the necessity to bring such a motion. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. Sanctions are provided to discourage an abuse or breakdown of the discovery process that would require court involvement. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 (App. 2006).

Rule 37(b)(2) sanctions can be imposed only if a party fails to obey an order to provide or permit discovery, including an order made under Rule 37(a) or Rule 35, or if a party fails to obey an order under Rule 26(f). Rule 37(b)(2) sanctions cannot be imposed upon a party for its initial refusal to provide a document when that party had provided that document after the court had ordered it to. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006).

The trial court can impose the Rule 37(b)(2) sanctions for the bank's refusal, despite the court-ordered safeguards, to permit inspection of the non-party borrower records which the court had ordered it to allow opposing counsel to inspect. Rule 37(b)(2) sanctions can be appropriate sanctions to impose for that refusal. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249-50 (App. 2006).

When a party had at least six days notice that it might be found in contempt and that Rule 37(b)(2)(A)

sanctions might be imposed and those six days should have been sufficient and when the party took the opportunity to file various papers concerning the issues raised but did not directly address the prospect of contempt or of Rule 11 or Rule 37(b)(2)(A) sanctions although it was on notice they would be considered at the hearing, thus if the party was not heard on the Rule 37(b) sanctions, it was not because it did not have an opportunity to be heard after it was on notice that Rule 37(b)(2) sanctions would be considered. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250-51 (App. 2006).

It is ordinarily inappropriate to look beyond the clearly delineated procedure of Rule 37 for the imposition of sanctions in the discovery context. Generally, Rule 37 is the sole source of sanctions for the discovery violations described in that rule. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

A court cannot award sanctions under Rule 11 for discovery matters subject to Rules 26 to 37, for which Rule 37 sanctions can be imposed. Nor can a court resort to its inherent powers when Rule 37 applies because Rule 37 is the exclusive remedy for failure to comply with a production order. Rule 37 sanctions for the failure to make discovery are the only relief available for failure to make discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

The only proper remedy for a party's initial refusal to produce a document would be the imposition of attorney's fees because the opposing party had to bring a motion to compel the document's production. FSM Dev. Bank v. Adams, 14 FSM R. 234, 251 (App. 2006).

Rule 37(b)(2)(A) sanctions could not properly be applied for a party's earlier refusal to produce a document because that document was eventually produced, but could be, and were, properly applied for not permitting the inspection of the designated records as ordered by the court. The limitations on a court's discretion under Rule 37(b) is that the sanction imposed must be just and it must be specifically related to the particular claim which was at issue in the court's order to provide discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

That some lesser sanction should have been considered first and imposed under Rule 37 is frequently the most advisable course of action, but Rule 37 does not require that, especially when the sanctioned party has a history of discovery abuse. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

The most severe Rule 37 sanction must be available not just to penalize those whose conduct warrants it but also to deter those who might be tempted to such conduct in the absence of a deterrent. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

A detailed or comprehensive explanation of the reasons should be included in the trial court order imposing Rule 37(b) sanctions. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the trial court had abandoned any further attempts at coercion and imposed Rule 37(b)(2) and 37(b)(2)(A) sanctions and, although it is uncertain whether the contempt sanction was actually ever imposed because the trial court let the Rule 37 sanctions "stand" as the contempt sanctions, if the contempt sanctions were, in fact, imposed, they were not civil in nature and must be reversed, and if none were imposed, then, in light of the Rule 37(b)(2) sanctions, the contempt finding must be vacated because no further purpose can be served by their imposition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Rule 37(b)(2) sanctions are not inherently criminal in nature and criminal due process protections do not have to be followed before they can be imposed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Attorney's fees are probably the most common Rule 37 sanction imposed. They are routinely

awarded to successful movants seeking to compel discovery unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. The great operative principle of Rule 37(a)(4) is that the loser pays. The trial court is to make the award against the losing party on the motion unless the court finds that its opposition to, or making of, the motion was substantially justified or that other circumstances make an award of expenses unjust. Thus the rule is mandatory unless one of these conditions for not making an award is found to exist. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

A party's statement that the lawyer should assume responsibility for technical and legal tactical issues and its assertion that it was not involved in the discovery disputes, only its counsel was, is not enough for an appellate court to say the trial court abused its discretion in not applying the attorney's fees sanctions against the party's former attorney himself rather than against the party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

The question on appeal is not whether it was an abuse of the trial court's discretion to quash a deposition subpoena for a party, but whether the trial court abused its discretion in awarding expenses and attorney's fees as sanctions for quashing the subpoena. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

When a motion for a protective order did not assert that the bank had waived the right to depose a party by going forward with her son's deposition – only that the son was knowledgeable and available and the party was not – the motion's opposition was substantially justified and the trial court abused its discretion when it awarded fees and expenses for bringing the protective order motion. That award will be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254-55 (App. 2006).

Deferring ruling on Rule 37 attorney fee requests is not a good idea. The purpose of Rule 37(a)(4)'s cost-shifting is to reduce the burden on the courts by deterring parties from making unjustified motions for discovery and by deterring their opponents from resisting discovery without justification. This deterrence is not as effective if the court defers the sanctions awards. FSM Dev. Bank v. Adams, 14 FSM R. 234, 255 (App. 2006).

The court will not impose a sanction for the failure to pay a $722.23 sanction when the order imposing the sanction did not set a deadline for its payment and the party has stated his willingness to pay any court-ordered sums. Instead, the court will set a deadline and if the defendant has not made that court-ordered payment by that date, the court will entertain a motion to strike his pleadings and enter a default. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Rule 37(b) sanctions may be imposed on a party only if the party fails to obey an order to provide or permit discovery and cannot be imposed for conduct that did not involve the party's failure to obey an order to provide or permit discovery. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear

interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Affirmed Rule 37 sanctions are considered costs that should be included in the money judgment and bear nine percent interest from the date judgment is entered until paid. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

An award of fees against the losing party on a motion to compel discovery is mandatory absent a finding that the opposition to the motion was substantially justified. The opportunity to be heard specified in Rule 37(a)(4) is satisfied either by holding an oral hearing after adequate notice, or by providing the affected parties the opportunity to file a written submission. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 571-72 (Pon. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

A party is not entitled to an order requiring that its expert witness receive payments in advance of, or during, a discovery deposition and since it is not entitled to such an order, its motion to impose sanctions because the opposing party has not made advance payments and to compel advance payments will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650-51 (Pon. 2009).

Although Rule 37 sanctions cannot be imposed on the FSM except to the extent permitted by statute, when the FSM's opposition to the sanctions motion was not substantially justified and an award of expenses is not otherwise unjust, the court may order the deponent whose conduct necessitated the sanctions motion or the attorney advising such conduct or both of them to pay the reasonable expenses incurred in obtaining the sanctions order. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 651-52 (Pon. 2009).

Rule 37(a)(4) requires an opportunity for hearing before a fees and expenses sanction is imposed and courts may comply with this requirement either by holding an oral hearing on adequate notice or by considering written submissions from the affected persons. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A sanction award imposed on a deponent may be setoff against the expert fees owed him after his deposition has been completed. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

When the court does not find that the defendants' opposition to the plaintiffs' motion to compel a deposition was substantially justified and it has not been shown that other circumstances make an expenses award unjust, the court must order the defendants to pay the plaintiffs' reasonable attorney fees in obtaining the order. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

Rule 37(a)(4) requires an opportunity for hearing before attorney's fees are awarded to a prevailing party on a motion to compel discovery and courts may comply with this requirement either by holding an oral hearing on adequate notice or by considering written submissions from the affected parties. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 64, 69 (Yap 2010).

If a discovery sanctions motion is granted in part and denied in part, the court may apportion among the parties and persons in a just manner the reasonable expenses incurred in relation to the motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 n.1 (Pon. 2010).

Besides awarding reasonable expenses to a prevailing movant on a sanctions motion, Rule 37(a)(4) also provides that if a sanctions motion is denied, the court must, after opportunity for hearing, require the

moving party, the attorney advising the motion or all of them to pay to the party who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees. So when the attorney work done in opposing the plaintiff's sanctions motion was necessary for the defendant to prevail on its sanctions motion and the two were so closely intertwined as to be inseparable, the expenses for work done in opposing the plaintiff's sanctions motion were thus expenses incurred in obtaining the sanctions order denying the plaintiff's and granting the defendant's sanctions motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

The great operative principle of Rule 37(a)(4) is that the loser on sanctions motions pays and the rule is mandatory unless one of the conditions for not making an award is found to exist. The loser may be either the movant or the motion's opponent. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

Although, in order to achieve Rule 37(a)(4)'s purpose of discouraging obstructionist discovery conduct, the "expenses" that are imposed as a sanction for discovery misconduct are to be given a more expansive meaning than the "costs" that are awarded as part of a judgment, even those "expenses" should not include normal overhead, such as Westlaw fees or in-house copying costs within a law office. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Postage expenditure will be allowed as a Rule 37(a)(4) sanctions expense. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

Although the court must first look to FSM sources of law rather than start by reviewing other courts' decisions, when the court has not previously considered whether a deponent and an attorney may be jointly held liable for Rule 37(a)(4) sanctions and that FSM civil procedure rule is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 n.3 (Pon. 2010).

When counsel supported the deponent in his unreasonable demands, did not advise the deponent that his demands were unjustified, and did advise the deponent that he could leave the deposition, in effect, advising the deponent not to answer, this advice (to leave – to not testify) was not substantially justified. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

Rule 37(a)(4) does not require that the court find that the attorney instigated the discovery misconduct nor does it require a finding of bad faith before sanctions may be imposed upon an attorney. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

When counsel's advice to a deponent was not substantially justified and was, in fact, unjustified, he and the deponent will be jointly and severally liable for the Rule 37(a)(4) sanctions thereafter imposed. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 (Pon. 2010).

Generally, a party is entitled to its expenses in bringing a motion to compel depositions if the motion is granted. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

Rule 37 provides, in part, that if a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Traditionally, the courts have administered justice with mercy. They have allowed a party a second opportunity to comply with the discovery rules and orders made under them. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

Since, in discovery matters, courts often make conditional orders intended to encourage compliance rather than punish a failure, the court, instead of striking a party's answer and dismissing that party's other claims, may order that party to file and serve under oath the party's appropriate responses to interrogatories

and produce the documents requested of the party by a date certain and grant the opposing party's motion if discovery is not provided by then, and the court may also order that the movant is entitled to its expenses in bringing the motion to strike the pleadings. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 439 (Pon. 2016).

A response to the bank's interrogatory that sought information about a specific named person (who apparently had endorsed at least one of the bank's refund checks), that that was a document that the party had received from the bank so the party did not know anything about it, is completely non-responsive to the question, which asked who the named person was and where he could be found, and was evasive and inadequate and thus a sanctionable response. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 441 (Pon. 2016).

Even when a party is entitled to the relief it has requested – dismissal of certain claims and defenses – as discovery sanctions, the court, under Rule 37(a)(3) practice, has discretion in determining whether to instead order further answers. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

The FSM Development Bank may recover an attorney's fee award under Rule 37. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

The appropriate time to seek appellate review of a Rule 37 expense award would be after final judgment. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If a party fails to obey an order to provide or permit discovery, the court may make such orders about that failure as are just, including an order striking out pleadings or parts thereof. Thus, if a party continues to disobey the court's order to provide discovery (including an order to appear at a deposition), the court unquestionably has the authority to strike out the parts of her joint pleadings that pertain to her. Her co-party's pleadings would remain. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

– Service

The acts of hand-delivering a subpoena to a deponent, reading its relevant portions in English and translating it into Pohnpeian, informing the deponent of the date time and location of his appearance, and stating that the order was signed by the court satisfy the requirement of Rule 45(c) of the FSM Rules of Civil Procedure that reasonable attempts be made to explain the subpoena to the person to be served. Alfons v. FSM, 5 FSM R. 402, 405 (App. 1992).

Motions may be served on other parties prior to being filed. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

Certificates of service should state whether service was effected personally or by mail. Chen Ho Fu v. Salvador, 7 FSM R. 306, 308 n.4 (Pon. 1995).

All parties must be served with pleadings and papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. Bank of the FSM v. Bergen, 7 FSM R. 595, 596 (Pon. 1996).

Service of a suggestion of death and a motion to substitute a party for a deceased party, if made by a party's attorney, must be made on the other parties (may be done through their attorneys) and personally (not upon their or the decedent's attorney) upon the nonparties who are to be substituted. The suggestion and motion can also be made by an attorney for the estate's representative, naming the estate's

representative or decedent's successors, and served on all the parties' attorneys. An attorney for a decedent cannot file a suggestion of death or motion to substitute unless she has the status as a legal representative of the deceased party's estate. Damarlane v. FSM, 8 FSM R. 10, 13 & n.2 (Pon. 1997).

The rules require a certification of service upon all other parties. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

Service upon a party of all papers and pleadings subsequent to the original complaint shall be made by delivering a copy to that person or by mailing it to that person's last known address. Under Rule 5 service by mail is complete upon mailing and a party's nonacceptance of the papers generally does not affect its validity. Service by registered mail is not required – ordinary mail suffices. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 9 FSM R. 241, 242 (Yap 1999).

The FSM Civil Procedure Rules 5, 6 and 7 set forth the requirements governing service, filing and the form of motions. In accordance with Rule 5, all motions filed with the court must also be served on each party to the action. Similarly, each paper filed must be accompanied by certification of service of copies upon all other parties. O'Sullivan v. Panuelo, 9 FSM R. 589, 592 (Pon. 2000).

A motion is deficient in multiple respects when it does not appear that it was served on any party to the action including the very party it was directed toward, when it was not accompanied by certification of service upon all other parties, when it was supported by an affidavit which was filed one day after the motion was filed and the affidavit was not accompanied by certification of service upon all other parties as required by Rule 5(d), nor was it served with the motion as required by Rule 6(d), and when the motion did not contain a certification that a reasonable effort had been made to obtain the agreement or acquiescence of the opposing party and that no such agreement had been forthcoming. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

Serving an answer three days late, and filing it four days late is not the type of prejudice that would allow a plaintiff to prevail while avoiding the case being decided on its merits because public policy favors court judgments be on the merits. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Service upon legal counsel may be made by leaving a copy of the document at his office with his clerk or other person in charge thereof. It is proper to serve a person who has an office at or is employed at the Kosrae State Legislature by leaving a copy of the document with the Administrative Secretary at the Legislature. It is the legal counsel's professional responsibility and duty to follow up with the Administrative Secretary regarding any documents that may have been served upon him at the Legislature during his absence from the Legislature. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

When counsel personally accepted the court's order and signed the return of service he had received actual and personal hand delivery of the order. Under these circumstances, the argument that he was not properly served with this document is without merit. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

Personal service on a party of a trial subpoena that gave clear, unambiguous notice to that party of the time and place of trial more than seven weeks before trial, constituted adequate timely notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 379 (Pon. 2001).

When serving a subpoena, reasonable attempts shall be made to explain the meaning of the subpoena and what the person is required to do. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

There was no defect in service when a person who had been subpoenaed for trial as a witness, was also a party to the litigation, who was representing himself. As such, he is to be credited with knowing that

"trial" means exactly that, a final determination of the merits of the case. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

FSM Rule 45 does not require notice of a trial subpoena to be served on the opposing party. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

When, service was done by servers employed at various times by plaintiffs' counsel, but who were duly appointed process servers and charged separate fees for the service, they were acting as private process servers. Fees charged by private process servers may be recoverable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Service costs are always allowable to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

When the actual defendants are natural persons, service may be accomplished by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing or employed therein. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

No service on a defendant of a motion for entry of a default judgment is necessary under the rules, and nothing in the rules requires that notice of hearings on default matters be given to a defaulting defendant. Konman v. Esa, 11 FSM R. 291, 293-94 (Chk. S. Ct. Tr. 2002).

Civil Rule 6(d) addresses when a written motion must be filed. It does not address notice or service, which is addressed by Rule 5. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Every written motion and similar paper must be served upon each of the parties. No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When the plaintiff has failed to establish that the relief requested in its motion may be had on an ex parte basis, the court will order the plaintiff to serve its motion on the defendant. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

Although a court must rely on a certificate of service attached to a filing and presume that it is correct, such a presumption may be rebutted by admissible evidence. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495 (Chk. 2004).

When a subpoena was not served on the plaintiff himself, as required by Rule 45(c), but rather on his counsel and when the subpoena did not comport with FSM Civil Rule 45(e), which provides that an FSM court may issue a subpoena directed to an FSM national or resident who is in a foreign country, because the plaintiff is a Filipino citizen residing in the Philippines, the court will grant a motion to quash the subpoena. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

Since Rule 45 does not provide for attorney's fees in the event a subpoena is quashed, a request for attorney's fees for successfully bringing a motion to quash will be denied. Amayo v. MJ Co., 13 FSM R. 242, 245 (Pon. 2005).

For filings subsequent to the original complaint, every pleading, every paper relating to discovery, every written motion, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. Service upon the party's attorney or trial counselor or upon a party (if unrepresented) must be made by delivering a copy to that person or by mailing it to that person's last known address. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

The FSM Supreme Court can issue subpoenas to persons in foreign countries only to those who are FSM nationals or residents. Lee v. Han, 13 FSM R. 571, 578 n.3 (Chk. 2005).

Failure to make proof of service does not affect the validity of the service. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Like other motions in a pending action, a motion to intervene must be served according to the requirements of Rule 5. Additionally, Chuuk State Supreme Court GCO No. 01-06 requires that a certificate of service be filed with the motion. If and when the court grants a motion to intervene, then service of process of the intervener's complaint is performed according to the requirements of Rule 4. Kubo v. Ezra, 16 FSM R. 88, 90 (Chk. S. Ct. Tr. 2008).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Filing in duplicate is required and opposing parties must each be served a copy. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 90 (Pon. 2010).

When the procedures which the Land Court followed in giving notice of the February 23, 2010 proceeding were adequate and complied with the requirements of Kos. S.C. § 11.613; when Winfred had not made his off-island mailing address known to the Land Court despite being aware of the decades-long proceedings; when, in his brief, Winfred acknowledges that the Land Court followed all of the steps of Kos. S.C. § 11.613 except for the final step, which requires that any claimant who is residing off-island and has informed the Land Court, in writing, of an off-island mailing address will be notified 45 days before a hearing by certified mail, return receipt requested; and when if Winfred had doubts as to the Heirs' counsel's ability properly to represent him, he should have let the Land Court know but did not, Winfred has received adequate notice pursuant to Kos. S.C. § 11.613. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 14-15 (Kos. S. Ct. Tr. 2011).

A notice of trial is defective when it is not properly served. Phillip v. Moses, 18 FSM R. 247, 250 (Chk.

S. Ct. App. 2012).

Service of papers by leaving them in the counsel's box at the clerk's office is not good service and does not constitute proper notice and is tantamount to non-service. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

All papers after the complaint that are required to be served on a party must be filed with the court, in duplicate, either before service or within a reasonable time thereafter and must be accompanied by certificate of service of copies on all other parties. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

The principal importance of the certificate of service is to provide the court with clear proof that service has been accomplished. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

A certificate of service must be filed with the court when the relevant paper is filed, and the court must rely on a certificate of service attached to a filing and presume that it is correct, but that may be rebutted by admissible evidence. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

The rules do not authorize electronic service via e-mail. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016).

When the actual service of an answer is not contested, there is little point to invalidating that pleading for lack of a certificate of service because that invalidation would serve no purpose except to fruitlessly extend the litigation's length. Helgenberger v. Chung, 20 FSM R. 519, 522 (Pon. 2016).

All filings must be served on all parties unless the party is in default and the default is for a failure to ever appear at any stage of the proceeding, and this means a failure to ever appear, not just a failure to appear at a particular stage of the proceedings or a failure to file a responsive motion. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

All filings must be served upon each of the parties, but no service need be made on the parties in default for failure to appear except for pleadings asserting new or additional claims for relief against them. Neth v. Peterson, 20 FSM R. 601, 603 n.1 (Pon. 2016).

When the defendants would have been in default only for their failure to file an answer, not from a failure to ever appear (since they had earlier filed a motion to dismiss), service on them of a request for an entry of default was required, and when it was not made, the default that was entered can be set aside on this ground alone. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

When the motion to set aside was prompt, when the default does not appear to be willful, when the plaintiffs, in their opposition, do not argue that setting aside the default would prejudice them, and when, although the defendants failed to assert a meritorious defense in their motion, they did assert affirmative defenses in their answer that would meet that requirement, the defendants' motion to set aside may be granted. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

The Kosrae Land Court's written decision must be served on all claimants who appeared at the hearing, pursuant to the State Court rules prescribing service requirements. Esau v. Penrose, 21 FSM R. 75, 80 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later

is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

– Service of Process

Determination of whether an individual is a managing or general agent for purposes of FSM Civil Rule 4(d)(3) is made on the basis of whether person served can fairly be expected to know what to do with the papers so that the organization will have notice of the filing of the action. A person of authority and responsibility in an organization's operation is a managing or general agent for purposes of the rule. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 109 (Pon. 1985).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Where a state official was sued in his individual capacity and service of the complaint and summons was made on the governor's office and the state attorney general, it is not good service because service upon an individual is made by delivery to the individual personally or by leaving copies at the individual's dwelling house or usual place of abode or of business or by delivery to an agent authorized to receive service of process. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

Although the civil rules do not provide for a specific method of service upon a state officer in his official capacity, service upon a state officer in his official capacity requires that he receive notice of the suit. Berman v. Santos, 6 FSM R. 532, 534-35 & nn.3, 4 (Pon. 1994).

Proof of service of process should be made to the court promptly and in any event within the time during which the person served must respond. Berman v. Santos, 6 FSM R. 532, 535 (Pon. 1994).

For personal service of a complaint and summons to be effective when the defendant refuses to accept the papers the complaint and summons must be left where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Rodale's Scuba Diving Magazine v. Billimon, 8 FSM R. 18, 19 (Chk. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94-95 (Chk. 1997).

Failure to effect service of the summons and complaint on the FSM Attorney General, as required by FSM Civil Rule 4(d)(4) and (5), as well as the national government agency and officer that are the defendants makes the case subject to dismissal under Rule 12(b)(5). Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Because a person may have more than one place of residence and a person's legal residence is his place of domicile or permanent abode, as distinguished from temporary residence, an FSM citizen temporarily working abroad is the legal resident of some state in the Federated States of Micronesia, and thus may be served process in any manner permitted by the FSM rules, such as by certified mail. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

The service requirements of the long-arm statute are more stringent than those of the rules of civil procedure. Service of process may be by personal service, and the service of summons must be made in like manner as service within the Federated States of Micronesia and must be made by an officer or person authorized to make service of summons in the state or jurisdiction where the defendant is served. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

Under Rule 4(j) a complaint that has not been served within 120 days of being filed can only be dismissed upon motion or the court's own initiative. Service made after 120 days but before a motion or court initiative to dismiss is good service and dismissal will not be granted on a later motion. Alik v. Moses, 8 FSM R. 148, 151 (Pon. 1997).

When a plaintiff has not shown good cause for his failure to serve the summons and complaint on a foreign defendant within 120 days as required by FSM Civil Rule 4(j) or pursuant to one of the alternative methods for service in a foreign country allowed by FSM Civil Rule 4(i) the court will dismiss the complaint against without prejudice. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

The 120 day time limit to effect service does not apply to service in a foreign country pursuant to Rule 4(i). This exception was clearly intended to cover situations where the difficulties in accomplishing service make it impracticable to complete the task in that time. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

When a plaintiff has not shown good cause for his failure to timely serve a defendant, a motion to dismiss without prejudice will be granted. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 484 (Pon. 1998).

In addition to the personal service provided in 4 F.S.M.C. 204(2), service may be accomplished for the purpose of the long arm statute by any of the means provided for in Rule 4 of the FSM Rules of Civil Procedure. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 124 (Pon. 1999).

Service of the summons and complaint may be made on a foreign corporation not an inhabitant of or found within the state by registered or certified mail, return receipt requested. If service was by mail, the person serving process shall show in the proof of service the date and place of mailing. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 124 (Pon. 1999).

Because failure to make proof of service does not affect the validity of the service, a motion to dismiss for a defect in a return of service will be denied. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

Under 4 F.S.M.C. 204, service of process may be made upon any person subject to the Supreme Court's jurisdiction by personally serving the summons upon the defendant outside the Federated States of Micronesia and service of summons under 4 F.S.M.C. 204 must be made in like manner as service within the Federated States of Micronesia by any officer or person authorized to make service of summons in the state or jurisdiction where the defendant is served. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370-71 (Kos. 2000).

Since a summons and complaint must be served together, "process" in 4 F.S.M.C. 204(2) necessarily means both the complaint and the summons. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

If a plaintiff opts for personal service on a defendant outside the FSM, it must be accomplished by a person authorized to do so under 4 F.S.M.C. 204. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

Nothing contained in 4 F.S.M.C. 204 limits or affects the right to serve any process in any other manner now or hereafter provided by law, such as by registered mail with a signed receipt as provided for in FSM Civil Procedure Rule 4(i). Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

The FSM Civil Procedures Rules do not specifically address the question of service upon a foreign government or its agents. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371-72 (Kos. 2000).

The question of proper service is different from the question of the validity of an immunity defense. The issue of sovereign immunity does not involve a jurisdictional defect in the same sense as does improper service of process. Rather, the sovereign immunity defense technically comes into consideration only after jurisdiction is acquired and simply provides a ground for relinquishing jurisdiction previously acquired. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 n.2 (Kos. 2000).

Because the Supreme Court has the power to make rules and orders, and do all acts, not inconsistent with law or with the rules of procedure as may be necessary for the due administration of justice, it may, in a case, prescribe the manner in which service may be had on the foreign government of Tonga and its agents. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 (Kos. 2000).

Fax service is not a method recognized by FSM Civil Procedure Rule 4. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 (Kos. 2000).

A court may find service upon a foreign government sufficient when the plaintiff sent it the complaint and summons by registered mail and the foreign government had actual notice of the complaint, since it filed a motion to dismiss, but the court will deny an entry of default when the plaintiffs cannot offer a formal proof of service, such as registered mail return receipt, because they cannot confirm service on the foreign government before it filed its motion to dismiss. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500, 501 (Chk. S. Ct. Tr. 1999).

The failure of any person to perform service of process when that duty is imposed by the court or by law is subject to severe sanctions. Nameta v. Cheipot, 9 FSM R. 510, 511 (Chk. S. Ct. Tr. 2000).

Although failure to make proof of service does not affect the validity of the service, it does mean that the clerk cannot enter a default because before a clerk will enter a default against a defendant, the record must show that that defendant was properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

If a defendant has never been properly served with a complaint and summons, that defendant cannot possibly file a late or untimely answer because the twenty-day time to answer allowed in Civil Procedure Rule 12(a), or the thirty-day time to answer allowed in 4 F.S.M.C. 204(3), does not start running until valid service of the complaint and summons has been made. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204-05 (Pon. 2001).

Ordinarily a person's usual place of abode is the place where the party is actually living, except for temporary absences, at the time service is made, but it is possible for a person to have two or more dwelling houses or usual places of abode for the purpose of Rule 4(d)(1) service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

If defendants wish to maintain that they reside at a certain address for "Department of Motor Vehicles purposes" but actually dwell elsewhere, it would seem that they cannot then contend that they should not be served process there. Certainly if they had been served traffic citations at that address, it is unlikely that their argument would prevail. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Service may be made at a defendant's usual place of business by leaving a copy with a person of suitable age and discretion employed at the place of business even though it is disputed whether the person who received the papers was employed in a managerial capacity. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Service of a summons and complaint shall be made by any person who is not a party and is not less than 18 years of age. Service shall be made upon an individual by delivering a copy of the summons and complaint to the individual or by leaving copies thereof at the individual's usual place of business with some person employed therein of suitable age and discretion then employed therein. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed and can be dismissed without prejudice, but because a dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, courts will often quash service instead of dismissing the action. That way only the service need be repeated. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

When a defendant has received sufficient notice of all causes of action and had a fair and adequate opportunity to defend, and when the plaintiff later properly served defendant with a copy of the summons and complaint, the court will not dismiss the case under Rule 12(b)(5). Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

If a plaintiff must use a disfavored form of service, such as service by publication, it should, at a

minimum, be held to strict compliance with the statute authorizing that form of service. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 445 (Chk. 2004).

The statute that gives a defendant 30 days to respond to a complaint instead of the 20 days required under the Rules of Civil Procedure applies only to process served on defendants who are not within the FSM's territorial limits. Boston Agrex, Inc. v. Helgenberger, 12 FSM R. 611, 613 (Pon. 2004).

Service of process – service of the complaint and summons, with one exception, may not be effected by the plaintiff himself, but generally must be made by some authorized, disinterested person. The only method by which a plaintiff may himself serve a complaint and summons is by registered or certified mail, return receipt requested and delivery restricted to the addressee. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

The alternatives for service of process upon persons in a foreign country do not permit a plaintiff himself to serve process. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Serving the complaint and summons by DHL Express does not comply with any of the permitted methods of service of process. DHL Express is not an authorized process server and service by DHL Express does not constitute service by mail. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived, if it is not raised either in the defendant's answer or in a Rule 12 motion to dismiss made before the answer is filed. Objections to personal jurisdiction or to service of process must be raised in a timely fashion, i.e., as a party's first pleading in the case, or they are waived. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

When a defendant's answer did not raise as a defense either lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process, he waived those defenses and a judgment against him is therefore not void on the ground of lack of personal jurisdiction over him or insufficiency of service of process upon him. Lee v. Lee, 13 FSM R. 252, 257 (Chk. 2005).

Service of an the amended complaint on a defendant, who has already appeared in the case to plead or otherwise defend, was proper when the amended complaint was served by mail. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

No service need to be made on the parties in default for failure to appear except that pleadings asserting new or additional claim for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

Although no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served upon them in the manner provided for service of summons in Rule 4, a proposed amended complaint should be served on defendants in default in conformity with Rule 4 since it is a pleading that asserts a new or additional claim for relief against the defendants. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A summons must be served with the complaint on each defendant. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

A case may be dismissed for insufficiency of service of process. Because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, a court will, when a defendant has moved for dismissal for insufficiency of service of process, often quash service instead of dismissing the action and order that the service be repeated within a certain time. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the

case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

In a civil action, service of process must be performed in compliance with Chuuk Civil Rule 4. Rule 4(a) specifies that service of process can be performed only after the filing of the complaint and the clerk's issuance of a summons. Muller v. Enlet, 16 FSM R. 92, 93 (Chk. S. Ct. Tr. 2008).

Unless specially appointed by the court, plaintiff's counsel is not a person who can properly serve process. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

An attempt to reinstate a defendant dismissed for lack of service by including it in an amended complaint after it has been dismissed, cannot be considered a motion to amend the complaint to add a new party but must be considered, at least as far as the dismissed defendant is concerned, to be a motion to reinstate a party earlier dismissed for lack of service of process on that party, in other words, a motion to enlarge time to effect service on the dismissed defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 15 (amendment of pleadings and relation back) cannot be used to subvert the principles that underlie Rule 4(j) – prompt service of process. The purpose of allowing complaints to be amended is to enable the pleadings to be conformed to the developing evidence rather than to extend the time for service indefinitely. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Rule 4(j) is intended to force parties and their attorneys to be diligent in prosecuting their causes of action. Filing an amended complaint does not justify the lack of prior service of process on a defendant in a multi-defendant case. The normal and expected procedure is to serve the unserved defendant first and then amend the complaint. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Time to serve a summons and complaint on a defendant may be enlarged for good cause shown if the enlargement is sought before the 120-day period has expired, or for excusable neglect if sought after the 120-day period has passed. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

When the plaintiffs offer no explanation whatsoever why they did not, at anytime, serve the summons and complaint on a defendant later dismissed for lack of service or why they never sought additional time to serve that defendant, the court will not give the plaintiffs leave to file a proposed first amended complaint that includes the previously-dismissed party-defendant. Nakamura v. Mori, 16 FSM R. 262, 270 (Chk. 2009).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

A natural person, not a corporation or juridical person should be served process in any manner authorized for service of process on individuals under Rule 4(d)(1), or Rule 4(d)(8), or Rule 4(i)(1). People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

No ruling can be made against persons over whom the court does not have personal jurisdiction. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

It is unclear whether a complaint and summons must be served with a petition for a writ of mandamus, but, service of the petition was defective because a summons should have been issued and served. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

While service on the Chuuk Attorney General's Office was proper, the State Election Commission should have also been served separately. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

Usually when service is defective, the court will either dismiss without prejudice and with leave to refile or quash service and grant the plaintiff a number of days within which to effect proper service. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

When the respondent filed a proper and timely motion to dismiss for lack of proper service together with a dispositive motion, the inadequate service will not, because of the importance of the case, bar a ruling on the alternative dispositive motion to dismiss for the failure to state a claim. The court will decide the dispositive motions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Insufficient service of process only affects personal jurisdiction – jurisdiction over the person of the defendants or respondents who should have been served properly. It does not affect subject-matter jurisdiction. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Every summons signed by the clerk should state the name, address and telephone number of the plaintiff's attorney or trial counselor, if any, otherwise the plaintiff's address and telephone number, and the court clerk is supposed to determine before filing that a paper subsequent to the summons and complaint has a certificate of service and contains the mailing address and telephone number of the party filing the paper or the party's attorney. Jacob v. Johnny, 18 FSM R. 226, 230 n.1 (Pon. 2012).

A successful process server's pay should not be dependent on a law firm's later litigation success. Poll v. Victor, 18 FSM R. 402, 405 n.1 (Pon. 2012).

Service of process costs will be allowed when the plaintiff's attorney's fee request states that his attorney reviewed the affidavits of service of the complaint on five named persons and on two national government offices and this corresponds to the $140 ($20 × 7 services of process) sought for service of the summons and complaint. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

Civil Procedure Rule 5(a) provides that no service needs to be made on the parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them must be served on them in the manner provided for service of summons in Rule 4. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

The class plaintiffs may obtain a default judgment against one defendant on the first amended complaint since that is the one that was served on him and that he failed to appear to answer or otherwise defend. Since the second amended complaint, even if it alleges no new facts, does contain new or additional claims for relief and potential increased financial liability for that one defendant, it must be served on him if the class plaintiffs intend to hold him liable on the second amended complaint's new legal theories

and claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

When the original complaints were served on the Governor and the Pohnpei Attorney General and when, if the State had been named as a defendant, service of process on the State would have been made on the Pohnpei Attorney General, the state therefore had actual notice of the suit and actual notice of the preliminary injunction hearing. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

Civil Rule 4(j) authorizes the dismissal without prejudice of any defendant not served with process within 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 (Yap 2012).

Service of process on a defendant vessel is usually effected by the vessel's arrest unless a substitute security, such as a letter of undertaking, has been arranged. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When a vessel has been abandoned and is situated such that the taking of actual possession is impracticable, the FSM national police must execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession or the person's agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 n.3 (Yap 2012).

A motion to stay the dismissal of a defendant for lack of service is considered a motion to enlarge time to serve process on that defendant. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

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Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

A court cannot order an *in personam* defendant to bring a vessel into the jurisdiction so that a plaintiff may then have it arrested and brought within the court's jurisdiction and made a separate defendant *in rem* because a court's authority to exercise *in rem* jurisdiction does not carry with it a concomitant derivative power to enter *in personam* orders. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Rule 4(j) sets a time frame of 120 days from when a complaint is filed for process to be served on the defendant. This time limit, like other time limits in the FSM Civil Procedure Rules, may be enlarged by the court for "cause shown" if request therefor was made before the expiration of the period originally prescribed or, on motion made after the expiration of the specified period if the failure to act was the result of "excusable neglect." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465-66 (Yap 2012).

The plaintiffs have shown more than ample cause for an enlargement of time for process to be served on a defendant vessel and they cannot be said to be acting in bad faith when they have presented some justification to enlarge time to serve process on the vessel because no effort by them would have succeeded in effecting a valid arrest of the vessel since the vessel is not in the FSM and since the plaintiffs have no control over the vessel's movements while it is absent from FSM waters, and when no prejudice to the adverse party, the vessel, from the added time to serve it process is apparent because its owners and operators are already *in personam* defendants and they have actual notice of the civil action against the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The time for the plaintiffs to serve process on an *in rem* defendant vessel may be enlarged so as to allow the plaintiffs to perfect service *in rem* on the vessel if, at any time before the *in personam* action goes to trial, the vessel may be found and arrested within the court's jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

When, in a case filed in January 2011, a copy of the complaint and summons was served on the acting Secretary of Health on February 15, 2012, two days after the trial court denied the plaintiffs' motions in part because the Secretary was not a party and when the FSM Attorney General was not given the required notice of this "service" on a new party, this "service" was ineffective to make the Secretary a party in the case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

A court obtains personal jurisdiction over a defendant when service of process – service of the complaint and summons – is properly made on that defendant. A court must have personal jurisdiction over a party before its orders can bind that party. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Nena v. Saimon, 19 FSM R. 317, 324-25 (App. 2014).

When a person refused to accept the complaint and summons and the papers were not left with him, he was not properly served with the complaint and summons and the court therefore did not acquire personal jurisdiction over him. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

Service of a summons and complaint can be made by any person who is not a party and is not less than 18 years of age. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

Service of the complaint and summons, with one exception, may not be effected by the plaintiff himself, but generally must be made by some authorized, disinterested person. The only method by which a plaintiff may himself serve a complaint and summons is by registered or certified mail, return receipt requested and delivery restricted to the addressee. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

When the plaintiff's attorney served the summons and complaint, service of process of those documents was insufficient under Rule 4(c)(1) because the attorney is deemed as a party to the action. The failure to effect service of the summons and complaint on the defendant makes the case subject to dismissal under Rule 12(b)(5), but because dismissal under Rule 12(b)(5), unlike most Rule 12(b) dismissals, is without prejudice and with leave to renew, often the service will be quashed instead of dismissing the action. That way only the service need be repeated. Heirs of Jonah v. Department of Transp. & Infrastructure, 20 FSM R. 118, 120 (Kos. 2015).

To effect valid service of process on a national government officer or agency, that officer or agency must be served with the complaint and summons and the national government must also be served a complaint and summons, and to effect service of process on the national government, the FSM Attorney General must be served (as well as any non-party officer or agency whose action or omission is being challenged). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

When the FSM Attorney General was never served, service of process has not been effected on the FSM national government nor has service of process been effected on the national government officers on

whom the complaint and summons were served because the additional service on the FSM Attorney General was not made. Failure to satisfy this service requirement makes the case against FSM defendants subject to dismissal under Rule 12(b)(5). Fuji Enterprises v. Jacob, 20 FSM R. 121, 127 (Pon. 2015).

"Process" is a summons or writ issued in order to bring a defendant into court. "Service" usually refers to the formal delivery of some other legal notice, such as a pleading or a motion or other documents. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

– Summary Judgment

Rule 56 of the FSM Rules of Civil Procedure is drawn from United States federal court rules. The court therefore may look to the interpretations of Rule 56 of the Federal Rules of United States Civil Procedure for guidance in seeking the proper interpretations of the FSM rule. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

A motion to dismiss is not to be granted unless it appears to a certainty that the non-moving party is entitled to no relief under any state of facts which could be proved in support of the claim, and if on the motion to dismiss matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Etscheit v. Adams, 6 FSM R. 365, 386 (Pon. 1994).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Latte Motors, Inc. v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

A motion to dismiss pursuant to Rule 12(b)(6) may be transformed into a motion for summary judgment if matters outside the pleadings are presented to and not excluded by the court. The burden is on the movant. A court, in reviewing a motion for summary judgment, must view the facts and any inferences deduced therefrom in the light most favorable to the party opposing the summary judgment, and before summary judgment will be granted it must be clear what the truth is, and any doubt as to the existence of a genuine issue of material fact will be resolved against the movant. Berman v. Santos, 7 FSM R. 231, 235 (Pon. 1995).

An order of partial summary adjudication, a finding that certain issues exist without controversy, is not an order granting partial summary judgment. An interlocutory order summarily granting adjudication of a portion of a party's claim cannot be transformed into a final judgment because issues of fact remain to be resolved. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (II), 7 FSM R. 407, 408 (Pon. 1996).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

When a party moving to dismiss for failure to state a claim states that an agreement is referred to in the complaint, and that by attaching a copy to its motion, it does not intend to present matter outside the pleadings, regardless of intent, the agreement is "matter outside the pleadings" under Rule 12(b)(6), and the court will therefore treat the motion to dismiss as one for summary judgment under Rule 56, as is expressly provided for by Rule 12(b). Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

A motion to dismiss for failure to state a claim may be brought after an answer has been filed by a motion for judgment on the pleadings or at the trial on the merits. But when the movant presents matter outside the pleadings as part of his motion to dismiss, then under Rule 12(c), the motion will be treated as one for summary judgment and disposed of as provided in Rule 56. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

An appellate court may affirm the trial court's summary judgment on a different theory when the record contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM R. 139, 150 n.3 (App. 2002).

Default, under Rule 55, is typically granted when a defendant has failed to answer or respond to a complaint within the prescribed time limit. A default judgment under Rule 55 will not be granted for the plaintiff's failure to timely respond to a summary judgment motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

When matter outside the pleadings is presented to and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), shall be treated as one for summary judgment under Rule 56. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

When matters outside the pleadings are presented to and not excluded by the court, a motion to dismiss shall be treated as one for summary judgment, but when the parties have presented matters outside the pleadings and neither party desires summary adjudication or that the court convert the motion, the court may exercise its discretion to exclude the matters outside the pleadings and treat the motion as one to dismiss. Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006).

When the movants seek summary judgment on the issue of a defendant's liability and rely, in most part, on evidence presented during a trial for a factual basis to support their motion and their motion ignores the appellate court's clear instruction that that trial was a nullity and the judgment had to be vacated and a new trial conducted, the appellate division clearly expects the trial court to resolve all liability and damages issues through the course of a new trial, not by reliance on the original trial. The court will not attempt to take shortcuts contrary to the appellate court's direction and will deny the summary judgment motion. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and the motion may be granted only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim. But when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the single legal issue presented is whether the defendant's regulations require it to make a demand for payment prior to denying port entry; when resolution of this issue will necessarily lead to a factual question: whether the defendant in fact made a demand for payment prior to threatening denial of, or denying, port entry; when the court cannot reach this factual question if it treats the motion as one to dismiss; and when both the dispositive questions may be resolved based on the pleadings and submissions already attached to the pleadings, the court will exercise its discretion to convert the Rule 12(b)(6) motion to one for summary judgment under Rule 56. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

On appeal from a summary judgment based dismissal, the standard of review is a *de novo* determination that there was no genuine issue of material fact and that the party who prevailed below was entitled to judgment as a matter of law. In other words, the reviewing court applies the same standard that the trial court employed when it determined whether the moving party was entitled to summary judgment. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

A grant of partial summary judgment is not a final judgment when the court did not expressly determine that there was no just reason for delay and did not then expressly direct the entry of a judgment, both of

which are required for the entry of a partial final judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

When there has been no express determination that there is no just cause for delay and no express direction to enter judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A "Complaint for Summary Judgment" cannot be considered to be a summary judgment motion since a summary judgment motion cannot be made until after the expiration of 20 days from the commencement of the action, and an action is commenced by the filing of a complaint. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

There is no such pleading as a "complaint for summary judgment." A pleading thus entitled is therefore a complaint, since a filing is what it is regardless of what the party who filed it chooses to call it. Albert v. O'Sonis, 15 FSM R. 226, 230 n.2 (Chk. S. Ct. App. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When trial court judgments were issued without a trial, they were summary judgments. The trial court should therefore have applied the summary judgment standard to its rulings. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

Trial court judgments issued without a trial are summary judgments to which the trial court should have applied the summary judgment standard to its rulings. The appellate court's standard of review of those rulings thus must be the one used to review summary judgments. It must apply *de novo* the same standard that a trial court uses in its determination of a summary judgment motion, which is that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

There is no constitutional due process right to a trial if the matter may properly be resolved by summary judgment. Trial is a process used to resolve disputed issues of material fact. A court must deny a summary judgment motion unless, viewing the facts in the light most favorable to the party against whom judgment is sought, it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Thus a decision without trial would violate due process rights only if there was a genuine issue of material fact that would preclude summary judgment because that issue would need to be tried. It is also an abuse of the trial court's discretion to grant summary judgment if a genuine issue of material fact is present. Albert v. George, 15 FSM R. 574, 579-80 (App. 2008).

A dismissal for failure to state a claim under Kosrae Civil Procedure Rule 12(b)(6) will be treated as a summary judgment if it presents matters outside the pleadings. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

The court has the discretion to include or exclude matters outside the pleadings on a motion to dismiss for failure to state a claim, and if matters outside the pleading are presented to and not excluded by the court, the motion is treated as one for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

Unlike a 12(b)(6) motion to dismiss, a 12 (b)(1) motion to dismiss may not be converted into a motion for summary judgment. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.2 (Chk. S. Ct. Tr. 2008).

When both parties submitted, in support of their respective positions, a substantial number of exhibits culled from the administrative record and the plaintiff's last response included other exhibits, a motion for judgment on the pleadings will be treated as one for summary judgment and disposed of as provided in Rule 56. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

It is improper for a party to use summary judgment briefs to effect a *de facto* amendment of its pleadings to assert new causes of action. Therefore a claim that falls outside the scope of the plaintiff's complaint is not properly before the court in a summary judgment motion and will be disregarded. Berman v. Pohnpei Legislature, 16 FSM R. 492, 498 (Pon. 2009).

When a party in support of or in opposition to a Rule 12(b)(6) motion to dismiss submits matters outside of the pleadings, a court has complete discretion to exclude those matters from consideration or to accept those matters and treat the motion as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

In evaluating a Rule 12(b)(6) motion, the court must accept the complaint's allegations as true and may grant the motion only if it appears to a certainty that no relief could be granted under any state of facts that could be proven in support of the claim, but when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

If matters outside the pleadings are referred to or presented and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted will be treated as one for summary judgment under Rule 56. Regardless of intent, if a document is presented that is outside the pleadings, the motion to dismiss will be treated as one for summary judgment under Rule 56 as provided in Kosrae Rules of Civil Procedure Rule 12(b). Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A trial court judgment issued without a trial or an evidentiary hearing is a summary judgment to which the trial court should apply the summary judgment standard – that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

An order granting partial summary judgment may be characterized as final only upon an express determination that there is no just cause for delay and upon an express direction for the entry of judgment. When no such determination or direction appears in an order, a plaintiff's motion for relief from judgment is one to reconsider an interlocutory order, and cannot rest on Rule 60(b). Smith v. Nimea, 17 FSM R. 125, 128-29 (Pon. 2010).

Since a trial's purpose is to resolve disputed factual issues and to determine the ultimate facts, no trial would have been needed if all the necessary facts had been stipulated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 n.1 (App. 2011).

When a moving party requests certain judgments and argues that it is entitled to them as a matter of law, the motion is one for summary judgment, regardless of the motion's title. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 435 (App. 2011).

A movant's argument that it had not constructively requested a summary judgment is without merit when it asked the trial court to conclude as a matter of law that the Board decision must be set aside; when it relied on findings of fact made previously in the same trial court by a different judge; and when, by supplying no new facts, it could not claim that it was asking for anything but a summary judgment. Similarly, its request for further hearings on the question of the lessee's identity was a request for conclusions of law that follow logically from the conclusions made as requested. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 436 (App. 2011).

Discovery is designed to prevent litigation by ambush. Just as a plaintiff cannot use an opposition to a defendant's summary judgment motion to effect a de facto amendment to its pleadings to assert a new claim, a plaintiff ought not to be able to use the summary judgment process to, in effect, amend its discovery responses without allowing the defendant to conduct necessary discovery into the basis and circumstances of that new allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When the court has not previously considered aspects of discovery procedure and the interplay between the discovery rules and the summary judgment rule and when the civil procedure rules covering discovery and summary judgment are similar to U.S. rules, the court may look to U.S. authorities for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 n.6 (Pon. 2011).

When matters outside the pleadings are presented, a motion for judgment on the pleadings is actually a summary judgment motion. Mori v. Hasiguchi, 17 FSM R. 630, 644 (Chk. 2011).

While the court may permit matter outside the pleadings to be considered, thus converting a Rule 12(b)(6) motion to dismiss for failure to state a claim to a Rule 56 summary judgment motion, the motion will be denied when that does not seem advisable until after the relevant matters have been put before the court and the record properly developed. When that has been done, any party is free to move for summary judgment on any or all claims still outstanding. Marsolo v. Esa, 18 FSM R. 59, 66-67 (Chk. 2011).

When the court accepts that the motion to dismiss may be properly considered a motion for summary judgment under FSM Civil Rule 56, it will not conjecture why the movant referenced FSM Civil Rule 12(b)(6) although the memorandum of points and authorities that accompanied the motion discussed the legal standard for summary judgment. Berman v. Pohnpei, 18 FSM R. 67, 71-72 (Pon. 2011).

A request for injunctive relief must fail for lack of grounds upon which it can be granted when it was based on a court order that did not require the defendants to do anything and the preliminary injunction upon which that order relied was later dissolved. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

When a motion to dismiss presents matters outside the pleading and the court does not exclude those matters, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties will be given reasonable opportunity to present all material made pertinent to such a motion by that rule. When neither party has propounded discovery during the eight months after the civil action's start, but the amended complaint contained copious amounts of exhibits, the parties have had reasonable opportunity to present such evidence. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

The court did not dismiss a plaintiff's claims sua sponte when the court did not decide its own motion but granted summary judgment as the result of a defendant's motion to dismiss, to which the plaintiff did not file an opposition. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

Any judgment rendered without an adversarial evidentiary hearing or trial is a summary judgment. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

If matters outside the pleadings are presented along with a motion for judgment on the pleadings, that motion becomes a summary judgment motion. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When the parties rely on declarations beyond the pleadings themselves, the court will treat the plaintiffs' motion for judgment on the pleadings as a summary judgment motion. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Once the moving party presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Adams

Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

Liability for punitive damages is determined by the fact-finder after an evidentiary proceeding. This is in part because the tortfeasor's finances must be examined. Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages that can be awarded. Punitive damages will therefore not be granted on summary judgment. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

When matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

When a motion to dismiss presents matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015).

Although the court must first look to FSM sources of law and circumstances rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM Civil Procedure Rule 56(b) which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 n.1 (Pon. 2015).

The court will consider a motion for emergency declaratory relief filed without an appropriate pleading under the requirements of a summary judgment motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 348 (Pon. 2016).

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

If, on a motion to dismiss, matters outside the pleading are presented to and not excluded by the court, the motion shall then be treated as one for summary judgment. Gilmete v. Peckalibe, 20 FSM R. 444, 447 (Pon. 2016).

The court's power to dismiss, under Rule 12(b)(6) some of a plaintiff's claims (or to grant partial summary judgment, under Rule 56(c), when a Rule 12(b)(6) motion is converted to a summary judgment motion because matters outside the pleadings were considered), because, even when viewing the plaintiff's factual allegations in the light most favorable to the plaintiff, the complaint's factual allegations fail to state a claim on which relief can be granted, is too well established to merit discussion. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 & n.2 (Pon. 2016).

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

– Summary Judgment – For Nonmovant

When a party's motion for summary judgment has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

Summary judgment may be granted in favor of the party opposing a summary judgment motion even where that party has not made a cross-motion under Rule 56. When summary judgment is granted in favor of the non-moving party, the facts and inferences to be drawn from them must be viewed in the light most favorable to the party that originally moved for summary judgment. Klavasru v. Kosrae, 7 FSM R. 86, 89 (Kos. 1995).

It is appropriate to grant summary judgment to the non-moving party when there are no material facts at issue and when the non-moving party is entitled to summary judgment as a matter of law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174-75 (Chk. 2001).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

When the moving plaintiffs are denied summary judgment as a matter of law and the non-moving defendants are entitled, as a matter of law, to summary judgment that they are not liable to the plaintiffs for punitive damages even if they are liable for the underlying cause of action and since the plaintiffs have had an adequate opportunity to show that the defendants were not entitled to judgment as a matter of law, the defendants are granted summary judgment that they are not liable for punitive damages. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

When the plaintiffs have not put forward any grounds that could toll the running of the statute of limitations although they have had an adequate opportunity to do so since the defendants' answer put them on notice that the statute of limitations defense would be asserted and when the plaintiffs were thus not prejudiced by the defendants' failure to bring a separate motion asserting the defense because they had been on notice that they would be required to show why or which of their claims would not be barred by the statute of limitations, summary judgment for the defendants will be granted on the issue of statute of limitations. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to

the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When the plaintiff movant has been denied summary judgment on its 1½% interest per month claim and when the defendants are entitled to judgment on that claim as a matter of law since no evidence is admissible to support that claim and since the plaintiff had an adequate opportunity to show that the defendants are not entitled to judgment as a matter of law on the interest claim because the plaintiffs knew the interest claim was a problem when its earlier motion for judgment on the pleadings was denied, the defendants are therefore granted summary judgment on the plaintiff's 1½% interest per month claim. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 426 (Chk. 2006).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

When the non-moving defendants have a valid defense to the tortious interference with a contractual relationship claim and when the moving plaintiff had an adequate opportunity to show that they did not, summary judgment in the defendants' favor is appropriate. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant the nonmoving party summary judgment in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

When a movant has been denied summary judgment because it was, as a matter of law, barred by the statute of limitations, the non-movant is entitled to summary judgment that the applicable statute of limitation bars the movant's recovery of the other unpaid loan instalment payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

When summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 n.5 (Pon. 2010).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 569 (Pon. 2011).

When a party's summary judgment motion has been denied as a matter of law and it appears the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 191 (Chk. 2013).

When summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that its nonmoving opponent is not entitled to judgment as a matter of law. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, a court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When there are no material facts in dispute and the defendants are entitled to judgment or to a dismissal on their affirmative defense of lack of subject-matter jurisdiction, the court will render summary judgment in the defendants' favor on the jurisdictional issue because whenever it appears by suggestion of the parties or otherwise that the FSM Supreme Court lacks jurisdiction of the subject matter, it must dismiss the action without prejudice to any case that the plaintiffs may file in a state court of competent jurisdiction. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

– Summary Judgment – Grounds

A motion for summary judgment under Rule 56 may be granted only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Manahane v. FSM, 1 FSM R. 161, 164 (Pon. 1982).

Under Rule 56 of the FSM Rules of Civil Procedure, a summary judgment shall be rendered only if the pleadings, depositions, answers, interrogatories, and admissions on files together with the affidavits, if any, show that there is no genuine issue as to the material facts and that the moving party is entitled to a judgment as a matter of law. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

Where there is no genuine issue of any material fact and the plaintiffs are entitled to judgment as a matter of law, summary judgment may be granted. Wainit v. Truk (II), 2 FSM R. 86, 87 (Truk 1985).

Where the nonmoving party admits allegations contained in the motion for summary judgment and there is nothing in the nonmoving party's answer or its response to the motion that suggests any factual issue in dispute, the moving party is entitled to summary judgment on those uncontested allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

A motion for summary judgment must be denied unless the court finds there is no genuine dispute as to material facts, viewing the facts in the light most favorable to the nonmoving party, and that the moving party is entitled to judgment as a matter of law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 360 (Kos. 1992).

Where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment must be granted. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 52 (Pon. 1993).

A motion for summary judgment may be granted only if it is clear that there is no genuine issue of material fact, viewing the facts, and any inferences therefrom, in the light most favorable to the party against whom summary judgment is sought, and that the moving party must prevail as a matter of law. When the only issues to be decided in a case are issues of law, summary judgment is appropriate. Etscheit v. Adams, 6 FSM R. 365, 373 (Pon. 1994).

Where the facts lead to differing reasonable inferences, thus establishing a genuine issue of fact, summary judgment is not available. Adams v. Etscheit, 6 FSM R. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

Whether a proposed boundary line on a map is insufficiently definite and certain to be located on the ground is a material fact genuinely at issue, precluding summary judgment. Adams v. Etscheit, 6 FSM R. 580, 584 (App. 1994).

Where uncontested evidentiary submissions establish the existence of a contract, performance by the plaintiff, and breach by the defendant, the plaintiff may be granted summary judgment because no question of material fact has been raised. Urban v. Salvador, 7 FSM R. 29, 31-32 (Pon. 1995).

Where a moving party provides no documentation other than his own affidavit to support the existence of an agreement, denied by the defendant, to pay 12% interest on past due sums, there is a genuine issue of material fact requiring a court to deny summary judgment. Urban v. Salvador, 7 FSM R. 29, 32-33 (Pon. 1995).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

A motion for summary judgment should be granted only when the evidence demonstrates that there is

no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, the facts and inferences to be drawn from those facts must be viewed in the light most favorable to the party opposing the motion. Klavasru v. Kosrae, 7 FSM R. 86, 89 (Kos. 1995).

A motion for summary judgment is well grounded in fact and law and shall be granted when the moving party demonstrates that there are no questions of material fact and that the moving party is entitled to judgment as a matter of law. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

Summary judgment may be granted only if it is clear that there is no genuine issue of material fact and that the moving party must prevail as a matter of law. A court must view the facts presented and inferences made in the light most favorable to the nonmoving party. If summary judgment is not rendered for all the relief requested, a court may enter partial summary judgment on such material facts that exist without substantial controversy. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 283 (Yap 1995).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Issues of statutory and constitutional construction and interpretation are not issues of material fact but matters of law. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 360, 363 (Chk. S. Ct. Tr. 1995).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material issue and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

In considering a summary judgment motion, a court is required to view facts and draw inferences in a light as favorable to the party against whom the judgment is sought as may reasonably be done. The motion may then be granted only if it is clear that there is no genuine issue of material fact and that the moving party must prevail as a matter of law. Gimnang v. Yap, 7 FSM R. 606, 608 (Yap S. Ct. Tr. 1996).

A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 81 (Pon. 1997).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts must be viewed in the light most favorable to the party against whom judgment was entered. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

When no affidavit or deposition is filed in opposition to a motion for summary judgment, there is no genuine issue presented as to any material fact and summary judgment will be affirmed. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts must be viewed in the light most favorable to the party against whom judgment was entered. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

Cross motions for summary judgment on an exemplary damages claim will both be denied when neither motion has presented any evidence on the claim. Isaac v. Weilbacher, 8 FSM R. 326, 337 (Pon. 1998).

As to a motion and a cross-motion for summary judgment, the familiar standard for granting a summary judgment motion is that judgment should be granted in favor of the moving party only if the pleadings, depositions, answers to interrogatories, and admissions on file, taken together with any affidavits, demonstrate that there is no genuine issues as to any material fact, and that the movant is entitled to judgment as a matter of law. The court must view the facts and inferences in a light most favorable to the party against whom judgment is sought. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 77 (Kos. 1999).

Summary judgment under FSM Civil Procedure Rule 56 is appropriate when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Marar v. Chuuk, 9 FSM R. 313, 314 (Chk. 2000).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430 (App. 2000).

A court may grant a summary judgment motion only it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The facts and inferences must be viewed in the light most favorable to the party opposing the motion. Harden v. Primo, 9 FSM R. 571, 573 (Pon. 2000).

Summary judgment motions are only granted if there are no disputed issues of material fact pertinent to the given cause of action or affirmative defense addressed by the motion. If any material facts are in dispute, the parties are entitled to a trial on the merits of their causes of action or affirmative defenses. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

A court must deny a motion for summary judgment unless it finds no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

When the only issues to be decided are issues of law, summary judgment is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

Summary judgment will be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 72 (Pon. 2001).

In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 72 (Pon. 2001).

The presence of factual issues will not bar summary judgment if they are not material to the controlling legal issue of the case, and thus have no dispositive significance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 77 (Pon. 2001).

Rule 56 provides for summary judgment in a movant's favor if the pleadings and facts properly before the court show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. For purposes of a summary judgment motion, the court views all facts in the light most favorable to the nonmovant. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 114 (Kos. 2001).

Summary judgment is appropriate when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Skilling v. Kosrae, 9 FSM R. 608, 610 (Kos. S. Ct. Tr. 2000).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 172 (Chk. 2001).

A summary judgment motion must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining, and that it is entitled to judgment as a matter of law. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

When all of the bases upon which a party seeks summary judgment are legally insufficient to create a prima facie case of entitlement to such judgment, that party's summary judgment motion will be denied. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 189 (Pon. 2001).

Summary judgment must be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. In considering a summary judgment motion, a court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

When the only issues to be decided in a case are issues of law, summary judgment is appropriate. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

A party is entitled to summary judgment when factual support for an essential element of the claim being asserted against the movant is absent from the case record. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Kosrae v. Worswick, 10 FSM R. 288, 291-92 (Kos. 2001).

A moving party is "entitled to a judgment as a matter of law" when the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When opposing affidavits show the existence of a genuine issue of material fact, summary judgment must be denied. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

Summary judgment will be denied when questions must be resolved before the movant can present a sufficient factual basis for a summary judgment. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

Summary judgment under Rule 56 is appropriate when, viewing the facts in the light more favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Jonas v. Kosrae, 10 FSM R. 441, 442 (Kos. S. Ct. Tr. 2001).

The court shall grant summary judgment if the pleadings, discovery responses and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to judgment as a matter of law. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 505 (Pon. 2002).

On motion for summary judgment, facts and inferences therefrom should be viewed in a light most favorable to the opposing party, and when facts lead to differing reasonable inferences, then summary judgment is not appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

If genuine fact issues can be reasonably resolved only in the movant's favor, then summary judgment in movant's favor is appropriate, but if those same fact issues may be reasonably in favor of either party, summary judgment will be denied. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 578 (Pon. 2002).

Summary judgment must be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

On motion for summary judgment, facts and inferences therefrom should be viewed in a light most favorable to the opposing party, and where facts lead to differing reasonable inferences, then summary judgment is not appropriate. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When it appears that there are no disputed genuine issues of material fact which remain to be tried in the case, the standard for granting summary judgment under KRCP Rule 56(c) has been satisfied. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 662 (Kos. S. Ct. Tr. 2002).

For purposes of a summary judgment motion, the court views all facts and inferences in the light most favorable to the party opposing the motion. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

When the only issues to be decided are issues of law, summary judgment is appropriate. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

The presence of factual issues will not bar summary judgment if they are not material to the case's controlling legal issue, and thus have no dispositive significance. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

If a genuine issue of material fact is present then the trial court has to deny the summary judgment motion. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court's summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

When a summary judgment was properly made in the defendants' favor, the plaintiff, as a matter of law, cannot be entitled to a contrary summary judgment. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 171 (Kos. S. Ct. Tr. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is

applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

In reviewing the trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 358 (App. 2003).

In reviewing a summary judgment motion, the court will grant the motion if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 602 (Pon. 2003).

Summary judgment is appropriate if the record before the court demonstrates that there is no genuine issue as to any material fact such that the moving party is entitled to summary judgment as a matter of law. AHPW, Inc. v. FSM, 12 FSM R. 114, 117 (Pon. 2003).

Summary judgment will be denied when the parties' two contentions, taken together, generate fact questions whether Pohnpei's conduct arises to the level of a constitutional violation; and when Pohnpei could not, in the guise of assisting pepper farmers, violate 32 F.S.M.C. 301 *et seq.* AHPW, Inc. v. FSM, 12 FSM R. 114, 124 (Pon. 2003).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Goyo Corp. v. Christian, 12 FSM R. 140, 145 (Pon. 2003).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Fredrick v. Smith, 12 FSM R. 150, 151-52 (Pon. 2003).

When none of the exhibits that go towards proving defendants' liability is authenticated and the only evidence of defendants' alleged negligence, purportedly a police report is not authenticated and the report also contains hearsay statements that may not be admissible, even if authenticated, there are material issues of fact precluding entry of summary judgment in the plaintiff's favor. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

Unauthenticated evidence is not competent, and cannot support a summary judgment motion. Fredrick v. Smith, 12 FSM R. 150, 153 (Pon. 2003).

No summary adjudication can be granted when a key issue of material fact is genuinely in dispute. Such a determination cannot be based on proffered conflicting affidavits, both based on personal knowledge. It must be based upon an adversarial proceeding, with cross-examination, before a judge. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

The presence of factual issues will not bar summary judgment if they are not material to the controlling legal issue of the case, and thus have no dispositive significance. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When a party has failed to show that there are issues of material fact preventing the court from entering summary judgment against it on the trespass or nuisance claims, it is appropriate to enter summary judgment in the movant's favor. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 214 (Pon. 2003).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 214 (Pon. 2003).

Summary judgment is appropriate where, viewing the facts in a light most favorable to the non-moving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Summary judgment may be granted on the issue of liability alone. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

Summary judgment will not be granted when the documentary evidence does not resolve the fact issues relative to that defendant's precise role in the cancellation of the plaintiff's permit. Wortel v. Bickett, 12 FSM R. 223, 227 (Kos. 2003).

Once a plaintiff has presented a *prima facie* case of entitlement to judgment on a cause of action, the burden shifts to the defendants to raise a question of material fact. Thus when the defendants have raised no such question, and where there is a duty of care, a breach of that duty, damage caused by the breach, and the value of the damage can be determined, liability as to the defendants' negligence has been established. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

A movant is entitled to summary judgment in the movant's favor if there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. If a genuine issue of material fact is present then the trial court has to deny the summary judgment motion. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

When, viewing the facts presented and inferences made in the light most favorable to the nonmoving parties, a party has met his burden of showing a lack of triable issues of fact, when his motion and supporting evidence have made out a prima facie case of entitlement to summary judgment, and when the opposing parties have not presented any competent evidence to demonstrate that there is a genuine issue of fact, his summary judgment motion will be granted. Dereas v. Eas, 12 FSM R. 629, 632-33 (Chk. S. Ct. Tr. 2004).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. Lee v. Lee, 13 FSM R. 68, 70 (Chk. 2004).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another,

and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

The court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The moving party has the burden of showing a lack of triable issues of fact, and a plaintiff, in order to succeed on a summary judgment motion, must also overcome all affirmative defenses that the defendant has raised. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

The standard for granting summary judgment is that the judgment sought must be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Sigrah v. Kosrae, 13 FSM R. 315, 317 (Kos. S. Ct. Tr. 2005).

Summary judgment must be granted if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Sigrah v. Kosrae, 13 FSM R. 315, 317 (Kos. S. Ct. Tr. 2005).

When plaintiff's counsel's assertions about a defendant's affirmative defense are not supported by any evidence as contemplated by Rule 56 of the FSM Rules of Civil Procedure and the plaintiff does not present any legal authority to support its position, issues of both fact and law remain, and the plaintiff is not entitled to judgment as a matter of law. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

Summary judgment must be granted if the pleading, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

A court must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the movant. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. Mailo v. Chuuk, 13 FSM R. 462, 469 n.6 (Chk. 2005).

Summary judgment will be granted in a claim for money damages when no questions of fact that preclude summary judgment exist and when there is no issue of fact remaining with respect to the amount owed. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523-24 (Kos. 2005).

Summary judgment must be granted if the pleading, discovery responses under oath, and affidavits show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment

as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Kinere v. Sigrah, 13 FSM R. 562, 566 (Kos. S. Ct. Tr. 2005).

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

Summary judgment cannot be granted unless there is no genuine issue present as to any material fact and the movants are entitled to judgment as a matter of law. Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. If a genuine issue of material fact is present then the trial court must deny the summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

In order to succeed on a summary judgment motion, a plaintiff must also overcome all affirmative defenses that have been raised. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

In ruling on a summary judgment motion, a court must view all facts and inferences in the light most favorable to the nonmoving party. Summary judgment may be granted only if the court finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. It is the moving party's burden to prove the absence of triable issues. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, but the court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

When the facts lead to differing reasonable inferences, thus establishing a genuine issue of fact, summary judgment is not available. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

Summary judgment will be denied when the court, having carefully reviewed the parties' submissions, concludes that genuine issues of material fact do exist. Amayo v. MJ Co., 14 FSM R. 487, 488 (Pon. 2006).

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

When the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, when the moving papers present a single issue – whether the plaintiff, which has obtained a national foreign investment permit, is also required to obtain a state foreign

investment permit – and when the parties agree that the facts are not in dispute, and that the case may be decided on summary judgment, summary judgment is appropriate. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 332 (Pon. 2007).

Under FSM Civil Rule 56(c), the court must grant the summary judgment when the pleadings together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, such as when the parties do not dispute the material facts, all of which are contained in the parties' stipulation. FSM v. Katzutoku Maru, 15 FSM R. 400, 403 (Pon. 2007).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. K&I Enterprises v. Francis, 15 FSM R. 414, 417-18 (Chk. S. Ct. Tr. 2007).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the non-moving party. The burden of showing a lack of triable issues of fact rests with the moving party. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

A court grants summary judgment if the pleadings, discovery responses under oath, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. Allen v. Allen, 15 FSM R. 613, 617 (Kos. S. Ct. Tr. 2008).

A moving party is entitled to a judgment as a matter of law when the nonmoving party has failed to make a sufficient showing on an essential element of the case with respect to which he has the burden of proof. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Allen v. Allen, 15 FSM R. 613, 617-18 (Kos. S. Ct. Tr. 2008).

Argument alone cannot create a disputed fact that will defeat summary judgment. Allen v. Allen, 15 FSM R. 613, 618 (Kos. S. Ct. Tr. 2008).

A court must deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, it finds that there is no genuine issue as to any material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284-85 (Chk. 2009).

A mere factual allegation cannot create a genuine issue of material fact. Yoruw v. Mobil Oil Micronesia, Inc., 16 FSM R. 360, 364 n.1 (Yap 2009).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, such as when the issues involve only statutory and constitutional construction. Issues of statutory and constitutional construction and interpretation are not

issues of material fact but matters of law. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Berman v. Pohnpei Legislature, 16 FSM R. 492, 494 (Pon. 2009).

When genuine issues of material fact remain, summary judgment is not appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

If a nonmoving party admits the allegations contained in a summary judgment motion and there is otherwise no factual issue in dispute, the moving party is entitled to summary judgment on the uncontested allegations. Barker v. Chuuk, 16 FSM R. 537, 538 (Chk. S. Ct. Tr. 2009).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, and it is the moving party's burden to show the lack of triable issues of fact. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Kosrae Civil Rule 56 provides for summary judgment in a movant's favor if the pleadings and facts properly before the court show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. For purposes of a summary judgment motion, the court views all facts in the light most favorable to the nonmovant. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the Kosrae State Court must view the facts and inferences in a light that is most favorable to the party opposing the motion. The burden of showing a lack of triable issues of fact belongs to the moving party. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A court will deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving parties, it finds that there is no genuine issue of material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact. Dungawin v. Simina, 17 FSM R. 51, 53 (Chk. 2010).

A trial court judgment issued without a trial or an evidentiary hearing is a summary judgment to which the trial court should apply the summary judgment standard – that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

When no defendant opposed the plaintiff's motion in writing and although the failure to file an opposition is deemed to be a consent to a motion, the court cannot automatically grant the summary judgment motion since there must still be a sound basis in law and in fact upon which to grant the motion. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

Summary judgment must be rendered forthwith if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law. A court considering a summary judgment motion must view facts and inferences drawn from those facts in the light most favorable to the party opposing the motion. Ladore v. Panuel, 17 FSM R. 271, 273 (Pon. 2010).

The existence of a genuine issue as to material facts means that the court need not reach the question of whether or not the plaintiff is entitled to judgment as a matter of law. Ladore v. Panuel, 17 FSM R. 271, 274 (Pon. 2010).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court applies the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434-35 (App. 2011).

When a party concedes a fact against its own legal interest, a trial court's finding of fact incorporating that concession as undisputed is not clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

Summary judgment is only proper when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 529 (Chk. 2011).

Summary judgment cannot be granted if genuine issues of material fact are present, but the factual issues cited by the defendants are not material because what matters is that the service tax on passenger tickets constitutes regulation of foreign commerce, and, as such, is an impermissible exercise by the state of a national power, summary judgment may be granted. The factual issues of how burdensome the state's regulation is, is not material to the question of the regulation's constitutionality. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 532 (Chk. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court will apply the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 569 (Pon. 2011).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The court will disregard an allegation when it is raised for the first time, and without factual support, in a written opposition to a summary judgment motion. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

To the extent that a deponent's later affidavit contradicts his deposition testimony, it cannot be used to create factual issues to defeat summary judgment because a party cannot create a triable issue in opposition to summary judgment simply by contradicting his deposition testimony with a subsequent affidavit. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

The failure to verify a derivative action complaint will not entitle defendants to an immediate dismissal

or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

A court must grant a motion for summary judgment if the pleadings, depositions, answers, interrogatories, and admissions on files together with the affidavits, if any, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to the material facts and that the moving party is entitled to a judgment as a matter of law. Berman v. Pohnpei, 18 FSM R. 67, 72 (Pon. 2011).

The court will grant the summary judgment requested if the pleadings, discovery, and affidavits show that there is no genuine issue as to any material fact and that the Bank is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012).

A court must deny a motion for summary judgment unless, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, the court finds that there is no genuine issue as to any material fact. Tarauo v. Arsenal, 18 FSM R. 270, 272 (Chk. 2012).

The court, viewing the facts and inferences in a light most favorable to the party opposing the motion, must grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

A court must deny a motion for summary judgment unless it, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 299-300 (Yap 2012).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material when, under the substantive governing law, it affects the outcome of the case. Kama v. Chuuk, 18 FSM R. 326, 330-31 (Chk. S. Ct. Tr. 2012).

A court must deny a summary judgment motion unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a plaintiff cannot prove that the defendants had a duty toward the decedent that the defendants breached, the plaintiff cannot prove an essential element of his case and the defendants must be granted summary judgment. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact upon which to grant the motion. Aunu v. Chuuk, 18 FSM R. 467, 468 (Chk. 2012).

FSM Civil Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Peniknos v. Nakasone, 18 FSM R. 470, 478 (Pon. 2012).

FSM Civil Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issues as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Peniknos v. Nakasone, 18 FSM R. 470, 478-79 (Pon. 2012).

In order for an issue of fact to be shown it must be supported by substantial probative evidence in the record, going beyond mere allegations. The evidence must be in the nature of facts, not conclusions, counsel's unsupported allegations, opposing party's own contradictions in the record, or opposing party's subjective characterizations. On a summary judgment motion, the court must penetrate the factual allegations contained in the pleadings and look to any evidential source to determine whether there is an issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

Unsupported statements of counsel at oral argument do not qualify as competent evidence upon which a court could find a genuine issue at trial. The court cannot be expected to draw inferences that are supported by only speculation or conjecture since the nonmoving party must do more than raise some metaphysical doubt as to the material facts: she must come forward with specific facts showing that there is a genuine issue for trial. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

A mere factual allegation cannot create a genuine issue of material fact. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

On summary judgment, a plaintiff cannot rely on a notice pleading requirement which is generally used for the complaint or the initiation of a claim under the civil procedure rules. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

The FSM pleading rules are flexible and informal rather than technical and thus require only notice pleading. FSM Civil Rule 8(a)'s pleading requirements are to be interpreted liberally, and a complaint which states the grounds of jurisdiction and alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with Rule 8(a). But just because a pleading is sufficient to withstand a Rule 12(b) motion to dismiss for failure to state a claim does not mean that it meets the standard to withstand a Rule 56(b) summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 488 (Pon. 2012).

Rule 56(c)'s plain language mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which the party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to a judgment as a matter of law when the nonmoving party has

failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

A promise to produce admissible evidence at some future time is not the production of admissible evidence in response to a summary judgment motion. A contention that evidence will be introduced and that it will show certain things is hearsay, and hearsay is generally not admissible evidence and thus cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

When the summary judgment opponents do not offer any affidavits or exhibits or point to any other competent evidence that would support their position, they have not met their burden of showing by competent evidence that could be admitted at trial that there is a genuine issue of material fact since argument alone cannot create a disputed fact that will defeat summary judgment. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

Under Rule 56, a court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law, and, in order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 495 (Chk. 2013).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Summary judgment is inappropriate when the plaintiffs have not yet overcome the defendant's affirmative defense. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The moving party has the burden of showing a lack of triable issues of fact. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 651-52 (Chk. S. Ct. Tr. 2013).

Summary judgment will be denied when the opposing parties present conflicting affidavits from the same non-moving party and the affidavit submitted by the movant was obtained under unexplained, dubious, and murky circumstances. Mori v. Hasiguchi, 19 FSM R. 16, 20-21 (Chk. 2013).

When, because of her failure to answer the opposing party's interrogatories the court ordered that those interrogatories will be deemed answered a certain way if the party has still failed to respond after 30 days and there was no response, the court may deem those interrogatories as answered a certain way and the opposing party may use those answers as a basis for summary judgment. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

A summary judgment motion must be granted when, viewing the facts and inferences in a light most favorable to the party opposing the motion, the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 75-76 (Pon. 2013).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Civil Procedure Rule 56(c), that is, it views the facts in the light

most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

In reviewing a grant or denial of summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion, which the court applies de novo to determine whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Smith v. Nimea, 19 FSM R. 163, 168-69 (App. 2013).

A court must deny a motion for summary judgment unless it, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Eot Municipality v. Elimo, 19 FSM R. 290, 293-94 (Chk. 2014).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

A Kosrae State Court order cannot be a partial final judgment when the court failed to include the express determination required by Kosrae Civil Procedure Rule 54(b) "that there is no just reason for delay" and the "express direction for the entry of judgment" which would allow the entry of a partial final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337-38 (App. 2014).

Since a permanent injunction is imposed only as part of a final judgment and since there is no final judgment in the absence of either a final judgment including the ruling on damages or an order containing express language that there is no just cause for delay and directing the clerk to enter a final judgment, the permanent injunction must be vacated, which would leave the earlier preliminary injunction in place. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

FSM Civil Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The court must view facts and inferences in a light that is most favorable to the party opposing the judgment. A fact is material only if it might affect the outcome of the suit and the failure to prove an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

When the party moving for summary judgment makes out a prima facie case which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. Unsupported statements of counsel at oral arguments do not qualify as competent evidence on which a court could find a genuine issue for trial. Unauthenticated evidence is not competent. Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a summary judgment motion unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The movant has the burden of showing a lack of triable issues of fact. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

When only the construction of a contract is at issue, the legal effect and interpretation of the contract is a question of law, and summary judgment is proper. George v. Palsis, 19 FSM R. 558, 565 (Kos. 2014).

Unless a court, viewing the facts and inferences therefrom in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. But Rule 56(c) requires that summary judgment be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to his case on which he will bear the burden of proof at trial, Rule 56(c) mandates the entry of summary judgment in the defendant's favor. In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. George v. Palsis, 19 FSM R. 558, 566-67 (Kos. 2014).

When factual support for an essential element of the claim being asserted against the movant is absent from the case record, a party moving for summary judgment is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

A nonmovant's contention that evidence will be introduced sometime in the future or at trial and that it will show certain things is hearsay and since hearsay is generally not admissible evidence, it cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

A grant or denial of summary judgment is reviewed using the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion. Thus, the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment as that initially employed by the trial court under Rule 56(c). Thus, the standard of appellate review of a summary judgment is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

In reviewing a trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under FSM Civil Rule 56. Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

A court must grant a summary judgment motion under Rule 56(c) if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. In considering a summary judgment motion, the facts and inferences to be drawn from those facts must be viewed by the court in the light most favorable to the party opposing the motion. FSM v. Kuo Rong 113, 20 FSM R. 27, 30 (Yap 2015).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving

party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, and once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

A court, viewing the facts and inferences in a light that is most favorable to the party opposing the judgment, will render summary judgment forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A fact is material only if it might affect the outcome of the suit and the failure to prove an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

When a party has not responded to a summary judgment motion, the party is deemed to have consented to the granting of the motion, and the court may, in its discretion, decline to hear oral arguments from that party. While that failure to file a timely opposition is deemed a consent to the granting of the motion, there still must be proper grounds to grant the motion. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

Under FSM Civil Rule 56, a motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. When the trial court denies a summary judgment motion, it should delineate between those material facts that are in dispute and those that are not. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Although the failure to file an opposition is, by rule, deemed to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact on which to grant the motion. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, will

render summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, must render summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion since there must still be a sound basis in law and in fact on which to grant the motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

When the complaint was filed on November 26, 2014, the six-year statute of limitations would bar the plaintiffs' claims unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. Thus, events that took place in 2007, cannot successfully overcome a statute of limitations affirmative defense. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

A court, viewing the facts and inferences therefrom in the light most favorable to the nonmoving party, must grant summary judgment only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue about any material fact and that the moving party is entitled to a judgment as a matter of law. Jacob v. Johnny, 20 FSM R. 612, 616-17 (Pon. 2016).

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment – the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

When no admissible evidence is submitted to prove the last item alleged in the defendant's account – an alleged October 21, 2011 payment – and when the plaintiff has submitted affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the June 15, 2000 principal balance of $1,075.17 equaling $4,164.70 between then and October 6, 2016, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000. The plaintiff has thus failed to show that there are no genuine issues as to any material fact on the defendant's affirmative defense of statute of limitations. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

– Summary Judgment – Grounds – Particular Cases

A summary judgment may be granted for a state named as defendant in an action asserting that the state is liable for negligent preparation of a survey when it is clear from the pleadings and record that the state did not exist when the survey was prepared, and plaintiff offers no theory under which the state could be liable and the pleadings, depositions, answers, interrogations, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

Conflicting affidavits show that the circumstances surrounding the execution of a document allegedly reflecting plaintiff's acceptance of a settlement and her release of defendant and others from liability for the death of her late husband are not sufficiently clear to permit summary judgment either as to the efficacy of that document or as to the application to the plaintiff's claims of the statute of limitations found at 6 F.S.M.C. 503(2). Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 1988).

The issue of whether the rule of primogeniture that appeared on German standard form deeds applied to land not held under one of those deeds is a question of law that may be decided by the court at the summary judgment stage even if the question is seen as a determination of foreign law. Etscheit v. Adams, 6 FSM R. 365, 373 (Pon. 1994).

Where a party has not raised a material issue regarding the one factual question that might bear on the applicability of the rule of primogeniture, it is appropriate for the court to decide the rule's applicability at the summary judgment stage. Etscheit v. Adams, 6 FSM R. 365, 374 (Pon. 1994).

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445-46 (Pon. 1996).

Summary judgment will be granted on the issue of the state's liability for the its employee's act when there is no genuine issue of material fact that at the time of the accident the employee was negligent, that he was acting at the direction of his employer and within the scope of his employment, and that his conduct was not wanton or malicious. Glocke v. Pohnpei, 8 FSM R. 60, 61-62 (Pon. 1997).

Summary judgment on a contribution and indemnity claim is not precluded when the only issue remaining is the legal effect of the plaintiff's and defendant's court-filed settlement on the defendant's contribution claims against a third-party defendant. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 310 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Isaac v. Weilbacher, 8 FSM R. 326, 336 (Pon. 1998).

On a motion for summary judgment, a court must consider the facts and inferences therefrom in a light as favorable to the non-moving party as is reasonable. Therefore summary judgment for payment of an invoice is precluded when there is a C.O.D. notation on the invoice, creating an issue of fact whether the goods were paid for before the defendant received them. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

Affidavits containing disputed facts about custom and tradition do not preclude summary judgment

when custom and tradition do not apply to the case. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

When the taxpayer has failed to meet its the burden of showing that the Secretary's assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 78 (Pon. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

A defense to a trespass action that someone other than the plaintiff owned the land would only be material if the defendant alleged that that someone authorized him to use the land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

When a defendant produces only incompetent evidence, regarding other people and other tracts of land, wholly unrelated to the land on which he is allegedly trespassing, and when the speculative and conflicting statements contained in his pleadings are insufficient to create a material fact as to his right to possess any part of the land, there are no material issues of fact and the plaintiff is entitled to summary judgment on its trespass claim. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

A trespass defendant's bald assertions of third party ownership does nothing to diminish a plaintiff's superior right to possession of the land as to him and is immaterial to the issue of which party to the trespass action has the superior right of possession. A plaintiff's summary judgment motion will therefore be granted as to this affirmative defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187-88 (Pon. 2001).

A defendant's summary judgment motion based on assertions of the validity of a third party's potential claim is insufficient as a matter of law to establish a triable issue of fact as to the plaintiff's superior right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

A corporation's president's statement that he bought the barge made eight years after the event and which accurately describes his activity on the corporation's behalf is insufficient to create an issue of material fact precluding summary judgment in his favor when it is consistent with his acting on the corporation's behalf and when the evidence shows that neither he nor the corporation ever took interest in the barge because the purchase was canceled. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself

with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM R. 320, 322-23 (Chk. 2001).

When the statute does not create a duty for the FSM Development Bank to provide technical assistance, and the movants have failed to put forth any competent evidence, such as affidavits or documentary evidence, to show that such a duty was created contractually or by justified detrimental reliance, their summary judgment motion based on that alleged duty must be denied because since they did not make out a prima facie case that the Bank had a duty to provide them technical assistance there was no factual basis for the motion and thus no proper grounds on which to grant it. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 346 (Chk. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM R. 441, 444-45 (Kos. S. Ct. Tr. 2001).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583-84 (Pon. 2002).

The plaintiff has not shown a causative link between the alleged contamination and her injury sufficient to withstand the defendants' summary judgment motion when, as between contaminated and uncontaminated kerosene, a reasonable trier of fact could not exclude the latter so as to conclude that it was the former that caused her injury. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

When a reasonable trier of fact could not exclude the plaintiff's playing with matches and uncontaminated – as opposed to contaminated – kerosene as the cause of her injuries, it follows that the record taken as a whole could not lead a rational trier of fact to find for her and that the defendants' summary judgment motion must be granted. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an

employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

When it is irrelevant to the litigation's outcome who built the house on the land, this fact, though disputed, is not a genuine issue as to material fact which would prevent summary judgment from being entered. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

When the plaintiffs, by virtue of certificates of title, have established ownership of the property presently occupied by the defendants, and when the defendants have failed to show that they have acquired ownership or a right to possession of the property, the defendants have failed to show a genuine issue of material fact exists as to the property's ownership and they have not raised a genuine issue of material fact which would prevent the court from granting the plaintiffs summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

When the defendants' contention that the certificate of title issued in 1983 is voidable is without merit, it does not show a genuine issue as to a material fact which would prevent summary judgment from being entered in plaintiffs' favor. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement.

Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

When an earlier Trust Territory High Court judgment clearly stated that someone owned only half of a land parcel and the plaintiff's only claim to the land is through his purchase of that person's rights, he cannot own any more of the land than the half that the seller owned, and when that judgment was res judicata and binding on the parties to that case and all claiming under them, there was no genuine issue of fact as to whether the plaintiff owned half or all of the land. He owned only half, and the defendants were therefore entitled, as a matter of law, to a summary judgment to that effect. Bualuay v. Rano, 11 FSM R. 139, 150 (App. 2002).

When the College presented competent evidence that the land to which a deed refers is located miles from the disputed property and when Rosario produced only incompetent evidence regarding other people and other tracts of land that was wholly unrelated to land at issue, the trial court correctly concluded that Rosario's evidence relating to his claim of a possessory interest was insufficient to create a genuine issue of material fact as to his right to possess any part of the land. Thus, as between the parties, the College has the greater right of possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360-61 (App. 2003).

When the defendants have not alleged that the bank records are inadequate or incorrect and they do not allege that payments have been made but not credited to their account and when the defendants have not submitted documentation nor proffered proof of any type that establishes or even suggests that the bank records are in error, a defendant's flat denial of the amount, without any effort to show how or why the amount is incorrect, does not create a genuine issue of material fact. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 602-03 (Pon. 2003).

An answer that alleges that they had made the monthly payments until a defendant became unemployed may be germane in a hearing on a motion for order in aid of judgment or other proceeding, but it does not create a genuine issue as to whether the defendants owe what they are alleged to owe, whether they stopped paying on that debt, and whether the plaintiff is entitled to recover the unpaid balance as a matter of law. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

Summary judgment will be granted when, viewing the facts in the light most favorable to the plaintiff, the defendant national government's $40,000 appropriation did not, as a matter of law, violate any of the plaintiff's constitutional rights since the allotment was not a subsidy or other payment to pepper farmers that arguably reduced or otherwise affected its competitive advantage in a way that violated its constitutional rights and when the court does not construe this allotment as some form of financing of Pohnpei's allegedly unlawful activities. Any connection between the FSM allotment and the destruction of AHPW's pepper business is too remote since there is no showing that the allotment caused, or even contributed to the cause of, the destruction of its pepper operation. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

When the FSM had no involvement in or authority over Pohnpei's decisions not to declare a trochus harvest, summary judgment in the FSM's favor is appropriate with respect to the alleged constitutional violations concerning the plaintiff's trochus business. AHPW, Inc. v. FSM, 12 FSM R. 114, 118-19 (Pon. 2003).

When the insurance contract language excludes bailment leases, a plaintiff vehicle rental business is not entitled to judgment as a matter of law on a claim that the defendants breached the insurance contract when they did not pay for a damaged rental vehicle. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

Summary judgment on a negligent misrepresentation claim will be granted when the uncontroverted and dispositive fact is that the defendants misled the plaintiff to believe that his rental fleet would be covered by the insurance policy if the vehicles were damaged while driven by renters, but the defendants failed to bind the type of coverage that was both requested and promised and when the defendants have not attempted to meet their burden of showing that there is a genuine issue of fact as to this claim. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308-09 (Pon. 2004).

Summary judgment cannot be granted when there appears to be a genuine issue of material fact whether the pickup's damage was total, and, assuming that it was, what the amount of these total damages were. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470-71 (Pon. 2004).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

When, viewing the facts in the light most favorable to the plaintiff and accepting his well-pled allegations (which remain to be proven) as true, a corporation (while under receivership) took dominion over the plaintiff's property; quarried it for rock; crushed the rock into aggregate; sold it; paid various expenses, including workers' wages, the operator's fees, and the receiver's fee; and then paid the royalties, to which the corporation was entitled, to the bank to reduce its indebtedness to the bank, the bank never took dominion over the property the plaintiff alleges is his and the bank is therefore entitled to summary judgment in its favor as a matter of law on the plaintiff's conversion and the "unauthorized sale of property" (the quarried aggregate) claims. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

When the bank's real property mortgage has never been enforced because receivership was the chosen remedy; when no agent of the bank is alleged to have entered or to have quarried the property the plaintiff contends is his; when the receivership was not the bank's agent over which it had control, direction, or authority; when the execution of a mortgage, even an invalid mortgage, is not an "authorization" by the mortgagee for anyone to either enter the mortgaged land or to trespass on another's land, viewing the facts in the light most favorable to the plaintiff, the bank, by asking for and obtaining amended receivership terms to facilitate aggregate production to meet another's needs and to set up a payment plan for the judgment-creditors' benefit, did not commit or authorize a trespass. The bank is therefore entitled to summary judgment in its favor on the trespass cause of action. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129-30 (Chk. 2005).

Summary judgment will be denied in a medical malpractice action when genuine issues of material fact exist with regard to the arrangements for the patient's follow-up after she returned to Kosrae and with regard to whether she took her medicine as directed that preclude judgment as a matter of law. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

On a summary judgment motion, while the asserted previous practice, if true (and it has not been proven), is some evidence that the plaintiffs' duties were hazardous, it is not sufficient to show that there is no genuine issue of material fact that their duties, for all hours worked, entailed unusual and extreme hazards entitling them to the hazardous pay differential. It thus remains a factual issue for trial whether each plaintiff's duties entailed unusual and extreme hazards and whether those hazards involved part or all of that plaintiff's hours worked and summary judgment will be denied on this issue. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

When viewing the facts and inferences in the best light to the plaintiff, and accepting his argument that the additional tasks he performed were duties of another classified position of tradesman, the plaintiff's claim for compensation for performing those additional duties must be rejected since the defendant, as the moving party, has shown that there are no genuine issues of material fact and that it is entitled to judgment

as a matter of law because the salary of the journeyman tradesman position which normally includes the additional duties is not greater than the plaintiff's regular salary, which it must be for extra compensation. Sigrah v. Kosrae, 13 FSM R. 315, 320 (Kos. S. Ct. Tr. 2005).

When one party fails to perform his promise, there is a breach of contract. Thus, when the plaintiff performed his promise to pay the defendant the amount of $10,000, but the defendant failed to perform her promise to transfer her right, title and interest in two parcels to the plaintiff, the defendant breached the contract with the plaintiff by her failure to perform. The defendant is liable to the plaintiff for breach of contract and the plaintiff is entitled to summary judgment on the issue of defendant's liability for breach of contract. Isaac v. Palik, 13 FSM R. 396, 400 (Kos. S. Ct. Tr. 2005).

When a defendant has shown a superior right to present possession of a parcel and the plaintiff has not shown any right to immediate possession of any of the parcels he owns or any right to actual possession until 2019, the plaintiff cannot maintain a trespass action against the defendant and the defendant has the superior possessory right and is entitled to summary judgment as a matter of law against the plaintiff on the plaintiff's trespass cause of action. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A party challenging a certificate of title bears the burden of proving that the certificate of title is not valid or authentic, and when the party has failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When there is no competent evidence that a defendant breached a duty owed to the plaintiff since his duty was to represent his late father's interests before the Land Commission, summary judgment will be awarded the defendant on the plaintiff's "fraud-act of mistake" – negligent misrepresentation cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568-69 (Kos. S. Ct. Tr. 2005).

When the affidavit of the former Chief of the Division of the Personnel was conclusory and potentially self-serving affidavit since his employment situation and termination is the same as the plaintiffs' and when it averred that the plaintiffs were hired in their public service system positions as chiefs without the usual competitive examination because they were the only persons qualified for their jobs and that their positions required rare or special qualifications which did not permit competition and when there is no evidence presented that a non-competitive examination of any of the plaintiffs was ever held, the affidavit is thus insufficient to show that there is no genuine issue of material fact that, after the reorganization statute had abolished their former positions that the plaintiffs were lawfully hired to fill the new public service positions. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

When the plaintiff has presented a prima facie case that it is entitled to summary judgment for its costs (including shipping, fees and taxes) for the goods it provided the defendant and for 50% of the profit from the sale of those goods after the costs were paid because those terms are found in the parties' written memorandum, the same cannot be said for the plaintiff's 1½% interest per month claim when that term is not included in the parties' written memorandum. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

When there is no reasonable dispute of fact that the port authority satisfied its obligations to make a demand for payment and allow the plaintiffs thirty days to pay before denial of port entry and denial of port entry is the only action that the plaintiffs challenge, the port authority is entitled to summary judgment. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 486 (Pon. 2006).

A genuine issue of material fact precluding summary judgment is whether, even if the Pohnpei construction industry's customary business practice did not include safety features that would have prevented or lessened the plaintiff's injuries, one or more of those safety feature(s) was so simple or so inexpensive in relation to the possible consequences that the Pohnpei construction industry ought to have adopted them and should be liable for the failure to adopt them. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

FSM Constitution Article IV, section 4 guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, summary judgment is then appropriate. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

When the college's part-time and full-time teachers are not similarly situated for equal protection analysis, and when, to the extent that the part-time and full-time teachers can be viewed as engaging in similar activities, the college's practice of paying its full-time and part-time teachers according to different pay scales for each credit-hour taught is rationally related to a legitimate government purpose, the college is entitled to summary judgment on a part-time teacher's equal protection claim. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

When the court has granted summary judgment on the basis that the plaintiff's helicopters are engaged in fishing, the court need not address the plaintiff's further contention that it is also subject to exclusive national regulation by virtue of the fact that its helicopters are engaged in interstate and international air transport and international shipping. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

Since the courts are the final authority on issues of statutory construction, when, based on the undisputed record and reasonable inferences drawn therefrom, the court concludes that the plaintiff is not selling imported items, the case is ripe for summary judgment on the issue of whether the tax statute applies to locally produced aggregate. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When a defendant believed that he still owned ¾ or ¼ of a lot, he believed that he had a legally cognizable interest in some portion of that lot and thus his actions in asking the state not to pay the rent to the plaintiff and his actions in suing the state instead of the plaintiff, although wrong-headed or the result of poor legal advice or a misconception of the law, were taken in the good faith belief that he had a legally cognizable interest in the land. Therefore the plaintiff's motion for summary judgment on his tortious interference with a contractual relationship claim will be denied as a matter of law. Dereas v. Eas, 15 FSM R. 446, 449-50 (Chk. S. Ct. Tr. 2007).

When the defendants did not stipulate to their ledger sheets' accuracy, that would have left one genuine issue of material fact before the court for trial because an open account is not self-proving. An open account must be supported by an evidentiary foundation to demonstrate the account's accuracy. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Since, viewing the facts in the light most favorable to the party against whom judgment was sought, a genuine issue of material fact remained, it was improper for the trial court to grant summary judgment, that is, to grant judgment without a trial on the remaining factual issue. Once the trial judge had taken the cases under submission and reached this point, he ought to have determined that in each case the ledger sheet amounts' accuracy was a genuine issue of material fact, and, after ruling on the legal issues before him, set this factual issue for trial in each case. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Denial of a summary judgment motion in a contract case means that there are genuine issues of material fact that preclude judgment as a matter of law in the movant's favor. It does not lead to the conclusion that there was no contract, but rather that there were issues of fact precluding judgment as a matter of law on the point. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When the court has not been supplied with the information necessary for the court to take judicial

notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When there is a factual dispute as to how much work the plaintiff contributed to the two projects on which he worked in relation to the work provided by other employees; when there is a factual dispute as to what deductions were properly taken from the projects' proceeds prior to commission being awarded; and when these factual disputes are material to the plaintiff's claim for unpaid commission, both parties' summary judgment motions on this claim will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the truth of the allegedly libelous letter is in dispute; when a factual dispute exists as to whether the allegedly libelous letter played a role in the denial of the plaintiff's application for a foreign investment permit, the business opportunity alleged to have been interfered with by the defendant; and when these factual disputes are material to the claim, both parties' summary judgment motions on the claim of libel and interference with business opportunity will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the plaintiff has alleged sufficient facts to support a defamation action and the defendants allege either that the statements were true, or for some defendants, that they did not make the statements, a factual dispute exists as to who said what about the plaintiff, and whether the statements were false. Under these circumstances, there are facts to be determined at trial and summary judgment motions will be denied. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, then summary judgment is appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

Since the court cannot ignore the facts that the guarantors agreed were true and stipulated to in the former litigation – that a corporation was the borrower, that the promissory note was incorrectly completed, and that they signed a guaranty – and instead pretend, for the sake of this independent action, that those facts are not true, and that the guarantors were the borrowers, the guarantors' current allegation that they were the borrowers cannot be taken as true because it is a conclusion of law masquerading as a factual conclusion that the court cannot accept or, alternatively, it is a conclusory factual allegation that is contradicted by facts which the court may judicially notice – the court filings, record, and reported decision in the former action and the appellate affirmance of that decision. Either way, the court cannot accept this allegation as true because it is not. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were

unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the issue of the bank's faulty preparation of some of the loan documents that showed the guarantors as borrowers and the effects of those scrivener's errors on the guarantors' liability was fully litigated in the former civil action and, on appeal, the guarantors' contentions were again fully considered and the trial court's decision was affirmed; when the defense of mistake in the document preparation was fully litigated in the trial court and also considered by the appellate court; and when the guarantors did not raise a fraud defense at that time but they could have if they had chosen to since all the facts known to them now were also known to them then, there is no genuine issue of material fact about whether the guarantors were misled by the bank's errors on the loan documents to believe that they were the actual borrowers and not guarantors since they all believed that the corporation was the borrower, not they, and that they had signed a guaranty, and, in the former action, had stipulated to these facts as true and that these facts were undisputed. Arthur v. Pohnpei, 16 FSM R. 581, 598-99 (Pon. 2009).

When, in examining the case under a summary judgment standard and in viewing all facts in light most favorable to the plaintiffs, there is a genuine issue as to material facts because there is a controversy over the contract and services rendered, the defendant is not entitled to a judgment as a matter of law, and his motion to dismiss on the ground that the plaintiffs failed to state a claim upon which relief may be granted will be denied. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 643 (Kos. S. Ct. Tr. 2009).

A sound basis in law and fact exists to grant the defendants' summary judgment motion when the plaintiff's cause of action accrued in December 2002, the applicable statute of limitations is six years, and the plaintiff filed his suit over six years after his cause of action accrued. Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010).

When requests deemed admitted by the defendants because their response was not filed by September 30, 2010 are later deemed withdrawn and when the plaintiff's partial summary judgment motion now lacks a factual basis upon which the court could grant it because it was based on those deemed admissions, genuine issues of material fact remain and the court must deny the motion for partial summary judgment. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

When a defendant challenging a regulation's validity has not established or made a substantial showing that the regulation was invalid because the agency acted in a manner contrary to statutory requirements in adopting the regulation, the agency is entitled to summary judgment that the defendant employer ought to have been remitting to the agency the employees' and the employer's health insurance contributions as required by the regulation and the employer's cross motion for summary judgment will be denied. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 541 (Chk. 2011).

When the plaintiff's summary judgment motion asks the court to establish defendant's liability for its employees' health insurance premiums from July 1, 2009 to December 31, 2010 but the plaintiff's complaint asserts claims to premiums only from September 2009 to December 10, 2010, although it could charitably be read to include a claim for continuing liability after December 10, 2010 and when the plaintiff has not asked to amend its complaint to extend back to July 1, 2009 or forward beyond December 10, 2010, the plaintiff's motion for partial summary judgment will be granted for health insurance premiums from September 2009 through December 2010. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 541 (Chk. 2011).

When the movant has relied on inferences it drew when a name was not on a list of the nonmovant's employees produced during discovery and when it could not find anyone with his surname registered as a

surveyor in either Guam or Hawaii, it has not produced any admissible evidence that the person was anything other than a employee and thus has not overcome the nonmovant's admissible evidence that that person was its salaried employee. Accordingly, the nonmovant will be entitled to summary judgment that its employment of that person did not breach the contract's subcontracting prohibition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570-71 (Pon. 2011).

Since, if a survey was not done as part of the required work under the contract, then the surveyor would not have been a subcontractor for that survey as he would not have been awarded part of an existing contract, whether any particular survey was work required under the contract is a genuine disputed factual issue, barring summary judgment for breach of the contract's subcontracting prohibition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

Summary judgment on an allegation that the contract's subcontracting ban was breached will be denied when factual disputes remain on 1) whether the surveyor did any particular survey work as part of the required work under the contract or whether the surveys were undertaken to protect contractor from boundary line lawsuits; and 2) whether, for any survey proven to be a subcontract, the subcontracting proximately caused any damages and can those damages be proven or should nominal damages be awarded. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

When all the admissible evidence, depositions, and affidavits, indicate that an employee, not a subcontractor, prepared all the final designs and thus any damages to the FSM from those designs, even nominal damages, must necessarily be attributable to contractor itself and not to its unsuccessful attempt to subcontract, the FSM has failed to make a showing sufficient to establish an essential element and the contractor is therefore entitled to summary judgment on this subcontracting allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574 (Pon. 2011).

When the movant offered evidence that certain entities were not its subcontractors and the nonmovant's opposition was silent about these alleged subcontractors and the nonmovant did not mention them during the hearing, the nonmovant has abandoned these allegations and the movant is entitled to summary judgment that it did not breach the contract by subcontracting work to these entities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574 (Pon. 2011).

When the FSM could have terminated GMP by written notice to GMP if, after notice and a hearing, the contracting officer found that GMP or its agent or representative had offered or given gratuities to any FSM officer or employee, but when the FSM never invoked this contractual procedure or gave notice or held a hearing, the FSM has waived any claim that it can use this alleged breach of contract to lawfully terminate the contract. Since the FSM failed to follow the contractual administrative procedure for termination when a gratuity allegation is made, GMP is entitled to summary judgment on the FSM's breach of contract claim based on allegations that GMP offered gratuities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 574-75 (Pon. 2011).

When GMP used the wrong coordinate system for the Chuuk road survey work, it was a breach of the contract and when there was expert testimony that the survey could have been corrected by converting it to the proper coordinate system with the right computer software and some fieldwork, the court cannot presume that this would have been successful or that it could have been accomplished at no direct cost to the FSM, and GMP will thus be denied summary judgment on this claim and the FSM granted summary judgment that the contract was breached but not for its claim because whether the breach was material is a factual dispute – whether the measure of damages should be the cost of the new survey or what the cost would have been to convert the GMP survey to the Truk-Neoch Coordinate System or whether any damages, other than nominal, are due at all. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577-78 (Pon. 2011).

When the court does not have before it evidence (and expert testimony would likely be needed) of what a design professional's duty entails when questions are raised about whether a proposal was over-designed or is unworkable under local conditions, the court will not speculate in that regard. The

existence of these factual issues bars summary judgment on the professional malpractice allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court has nothing before it about what a design professional's duty is in relation to designing within a proposed budget, it will not speculate in that regard. Thus, whether the cost overruns in the design were such that they were the result of not exercising the reasonable care a professional in good standing would under similar conditions and like surrounding circumstances is a factual question barring summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

Even when there is no FSM regulatory or statutory requirement that final design plans be stamped or that certain professionals stamp only certain plans, the court will not speculate about the standard against which to measure the civil engineer's acts in determining whether he acted properly in stamping electrical designs to indicate they were the final version rather than having an electrical engineer do it or indicating it in some other manner since evidence, most likely expert, must be produced about the standard professionals should be expected to follow in the FSM – in this case, not whether plans should be stamped by a professional but whether a civil engineer's stamp on electrical engineering plans is contrary to the degree of care a civil engineer should exercise. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

When, because the only evidence it produced was not competent, the nonmovant has not overcome the movant's admissible evidence that all the required plans were left behind and when the nonmovant gave the movant no opportunity to cure its omission, if in fact it had failed to leave every plan it should have, the movant is entitled to summary judgment on the claim that it committed malpractice by failing to leave its plans behind. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583-84 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584 (Pon. 2011).

If the contractor had told the FSM that it done soil testing when it had not and if the FSM relied on that misrepresentation to its detriment, then that could have constituted an intentional material misrepresentation or fraud. But when the contractor informed the FSM that it had not done soil testing but had instead used the soil tests done elsewhere for its design preparations and the FSM then waived this requirement for these two projects; when the contractor included clauses in draft construction bid documents submitted to the FSM for its approval that the construction contractors conduct soil testing; and when, even if soil testing has been done in the design phase, soil testing is still necessary in the construction phase (and may have been particularly necessary here since the pre-design soil testing has been waived), there was thus no misrepresentation made to the FSM. The contractor is entitled to summary judgment on the FSM's fraud claim based on putting soil testing requirements in the bid documents. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When the plaintiff does not identify any statement made during one incident that it detrimentally relied on or any damages caused by it and the other alleged incident is not properly before the court and was not pled with particularity, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on those allegations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When a project was never put out to bid and its bid documents never used, the plaintiff cannot show elements essential to its claim – that it relied on those bid documents to its detriment. Accordingly, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on allegations that the bid documents prepared by the defendant contained terms that they should not have. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the plaintiff has not shown that it relied to its detriment on the exculpatory language in bid documents prepared by the defendant, elements essential to its fraud claim, the defendant will be granted summary judgment on the fraud or misrepresentation claim based on allegations that the defendant prepared bid documents with exculpatory language. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the court has nothing before it from which it can determine whether any delayed payment was made within a reasonable time, it must deny summary judgment on the claim that the contract was breached by untimely payments. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 588 (Pon. 2011).

When neither side has provided the court with the regulations or other legal authority illustrating the mechanism by which and the circumstances under which the U.S. Department of the Interior can cut off previously authorized Compact funds and when the parties dispute whether a letter was legally effective to cut off existing funds so that the FSM would be unable to certify those funds availability, the court is unable to conclude, based on the undisputed facts, that, as a matter of law, that there were no funds available to be certified or that the FSM funds were available to be certified but that the FSM did not do so. Consequently, neither side can be granted summary judgment on this issue. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 589 (Pon. 2011).

When the court has granted the movant summary judgment on only some of the seven grounds that the nonmovant asserted were grounds for termination of the contract for cause but that the movant asserted were pretextual, the court must deny the movant summary judgment on its counterclaim that the termination was a breach of contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011).

When whether the FSM failed to perform a duty to coordinate is a factual (or a mixed factual and legal) question, it is inappropriate for resolution at the summary judgment stage. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

A partial summary judgment motion will be denied when it asks that the individual defendants be dismissed because the corporate defendant's presence in the case is solely as an interpleader – as a party who has joined in one case all those persons with claims to any of the 2,160 shares so that all their rights can be adjudicated and the corporation will abide the result – ignores the plaintiff's tort claims of attempted improper interference with his purchase of the stock and that at least one individual defendant seems central to those claims and the corporation may also be involved. Mori v. Hasiguchi, 17 FSM R. 630, 645 (Chk. 2011).

When, even assuming the plaintiffs' allegations are true, they do not state that a plaintiff relied upon the misrepresentations the plaintiffs allege to be the basis of the collateral fraud, much less that her reliance induced her to act to her detriment, and when they do not state that the defendant prevented her from having a trial or from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the plaintiffs, cannot but conclude that the defendant is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

When it is apparent from the pleadings that genuine issues of material fact are present and when it is apparent that the trial court's judgment included rulings on disputed factual issues, the case was not one that was appropriate for resolution by summary judgment and thus the trial court judgment must be vacated and the matter remanded for trial. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Since, from what the court has before it, it cannot determine when the statute of limitations for the plaintiff's claim started to run or if it was tolled, there is an inadequate factual basis to grant the defendant's summary judgment motion on a statute of limitations ground. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

Since the defenses of laches, estoppel, and waiver generally require certain factual determinations about a party's acts or omissions, when those facts have not been established, there is an insufficient factual basis 711
on which to grant a movant summary judgment on these defenses. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

"Forum shopping," the practice of choosing the most favorable jurisdiction or court in which a claim might be heard, is not a ground for summary judgment. At most, it is a claim that the case should be dismissed without prejudice so that the parties could pursue it in some other forum. Tarauo v. Arsenal, 18 FSM R. 270, 274 (Chk. 2012).

When one reasonable inference is that Yuh Yow Fishery is the alter ego of the corporation that owns the vessel thus establishing a genuine issue of fact, the court cannot grant Yuh Yow Fishery's summary judgment motion that it is not liable for damages that may flow from a vessel's grounding since summary judgment is not available when the facts lead to differing reasonable inferences. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

When by the time the case was filed on January 14, 2010, the six-year statute of limitations would, even though it had been tolled by the filing of an earlier case, bar any claims arising before September 6, 2003, and when it is undisputed that all of the plaintiff's overtime claims were for 2002, the state has good grounds for and is entitled to summary judgment on its statute of limitations defense. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

When an employee had been requested to come into the work place to meet with management and did not and when the employee subsequently did not report to the work place for twelve days at which point she was administratively terminated, the existing evidence is sufficient for the employer to make out a prima facie case of entitlement for summary judgment. To survive summary judgment, the employee must establish that genuine issues of material fact exist as to whether she voluntarily abandoned her job and when she failed to offer any evidence setting forth specific facts to overcome the employer's voluntary job abandonment evidence, she has not shown that there exists any genuine issues of material fact for trial and the employer will be granted summary judgment that she abandoned her job. Peniknos v. Nakasone, 18 FSM R. 470, 481 (Pon. 2012).

In an action for defamation-republisher, a plaintiff's statement of facts are insufficient to show the essential element of republication by the defendant when the plaintiff does not name the defendant's employee(s) that made the republication of any defamatory communication, or state when, where, and how the communication(s) occurred or who were the communication's recipients. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

Since a defendant moving for summary judgment may rely on the absence of evidence to support an essential element of the plaintiff's case, when the plaintiff has not sufficiently shown all of the elements necessary to sustain the count of defamation-republisher, there are no genuine issues of material fact and the defendant is entitled to a judgment as a matter of law. Peniknos v. Nakasone, 18 FSM R. 470, 486-87 (Pon. 2012).

One of the elements of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress and when the plaintiff does not allege any physical ailments or manifestations resulting from her termination from employment and other claims, her claims fail a summary judgment challenge for the lack of a sufficient showing of an element of her causes of action. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When no specific evidence was brought forth to indicate that the plaintiff has suffered any physical manifestation of emotional distress and when the plaintiff presented no evidence that any of the defendant's acts she complained of caused her any physical injury; or that any mental anguish or emotional distress she might have had resulted in any physical manifestation; or that anyone intended or negligently inflicted emotional distress upon her, her infliction of emotional distress causes of action cannot withstand a summary judgment challenge. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

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When, although the defendants raised the defenses of unclean hands, estoppel, and waiver in their answer, they did not assert in their opposition to the plaintiffs' partial summary judgment motion that any of these defenses applied to the plaintiffs' claim for repayment of the Chuuk airport renovation loan, they have, for the loan repayment claim, waived these defenses. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

A defendant's inability to pay does not eliminate the defendant's liability to pay. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When, since the State of Chuuk and its Governor cannot prevail on their limitations defense, the plaintiffs' motion for partial summary judgment will be granted against the defendant state because Chuuk was the borrower on the airport renovation loan but since the Governor is not liable on the loan partial summary judgment will not be granted against him. Eot Municipality v. Elimo, 19 FSM R. 290, 295-96 (Chk. 2014).

Summary judgment cannot be granted on a breach of contract claim when whether the plaintiff's termination was "reasonable" is a material issue of fact in dispute since the employment contract required the plaintiff to perform to the government's reasonable satisfaction. Zacchini v. Hainrick, 19 FSM R. 403, 410-11 (Pon. 2014).

When, even considered in the light most favorable to the plaintiff, only one of the elements of defamation can be met, the inability to prove the other elements of the claim, necessarily requires that summary judgment be granted for the defendants with regard to the defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Summary judgment must be granted for the defendants on the plaintiff's defamation per se claim when, although the alleged defamatory remarks relate to the plaintiff's professional reputation, the business imputation is not apparent on the face of the words and the disparagement is only made by reference to the context and to innuendo to explain why those words are opprobrious. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The defendants must be granted summary judgment on the plaintiff's defamation per se claim when the plaintiff cannot meet the legal standards necessary to prove the four elements of defamation at trial. The inability to prove even one element bars the claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The FSM has conclusively established that there are no triable issues of material fact that a defendant had fraudulently converted $24,252.80 when the wrongdoing to which the defendant pled guilty and was convicted involved obtaining the $24,252.80 but the FSM has not established the remaining part of its current claim that the defendant is liable to it for $38,501.76 since that was not was not a question distinctly put at issue and determined in the defendant's prior criminal case so collateral estoppel or issue preclusion cannot be used to establish the defendant's liability for that larger sum. Any wronging involved in obtaining the rest of the $38,501.76 was not what the defendant pled guilty to and thus was not a question distinctly put at issue and determined in that criminal case. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plaintiff cannot use collateral estoppel to obtain summary judgment for an amount that was not a question distinctly put at issue and determined in the defendant's prior criminal case but can obtain partial summary judgment for the amount that was put at issue in the prior case with credit for the amount she had already paid. FSM v. Muty, 19 FSM R. 453, 461-62 (Chk. 2014).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff has not shown any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and the defendants are entitled to summary judgment on this cause of action. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

Summary judgment will be granted for the defendants on the plaintiff's defamation and false light cause of action when the plaintiff has failed to make a sufficient showing on essential elements of his case with respect to which he has the burden of proof and when he, in his opposition to the summary judgment motion, has not shown that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

When the plaintiff's claims for false imprisonment, for destruction of standing in community, and for wrongful invasion of privacy – false light were all predicated on his mistaken supposition that he was entitled to retain another person's pigs until compensated and that therefore his arrest was unlawful, the defendants are entitled to summary judgment on these claims as well as summary judgment on his civil

rights violations claims insofar as those claims are predicated on his arrest being unlawful. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The defendants are entitled to summary judgment on a plaintiff's trespass claim when unrebutted affidavit evidence defendants shows that the plaintiff told the police to get the pigs from his land and return them and shows that a resident of the property was there and gave him permission to enter the land and retrieve the pigs. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

A plaintiff's allegation supported with his own affidavit, that he was physically injured when he was arrested by police officers, although not very specific, remains genuinely at issue when it was not rebutted by the defendants. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

When the plaintiff did not plead any physical manifestation of emotional distress but did plead a physical injury – a battery – in connection with his arrest, whether that physical injury (battery) occurred (and also whether any emotional distress was inflicted) are a genuine issues of material fact precluding summary judgment on this claim. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

The employer is entitled to a judgment as a matter of law when, even viewing the uncontested facts in the light most favorable to the discharged employee, there are no genuine issues of material fact and the discharged employee cannot prevail on his breach of contract claim because he was properly laid off in accord with the contract terms incorporated from the personnel manual; because the employer had the right to layoff employees; because the employer created a specific layoff procedure in its personnel manual, and because the employee was laid off according to that procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 267 (Pon. 2015).

– Summary Judgment – Procedure

A party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

In considering a motion for summary judgment under Rule 56, the facts and inferences to be drawn therefrom, must be viewed by the court in the light most favorable to the party opposing the motion for summary judgment. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

When a party to a civil action seeks summary judgment on the question of liability, it must initiate the inquiry even as to affirmative defenses. The moving party has the burden of clearly establishing the lack of any triable issue of fact and this burden extends to affirmative defenses as well as to the moving party's own positive allegations. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

When a party moves for summary judgment on an affirmative defense, putting forward arguments and evidence indicating that there is no material fact at issue and that the defense is insufficient as a matter of law, the opposing party must produce some evidence to rebut the moving party's evidence or the moving party is entitled to partial summary judgment. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 130 (Pon. 1985).

Where the party moving for partial summary judgment has done nothing to show that a factual basis for the opposing party's affirmative defenses is lacking or that the defenses are insufficient as a matter of law, the defenses remain at issue and the moving party is not entitled to partial summary judgment. FSM Dev. Bank v. Rodriguez Corp., 2 FSM R. 128, 131 (Pon. 1985).

Facts and inferences are to be viewed in the light most favorable to the party against whom summary judgment is sought and the motion may then be granted only if it is clear that there is no genuine issue of material fact and the moving party must prevail as a matter of law. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 284 (Pon. 1986).

Where the party moving for summary judgment makes out a prima facie case which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to offer some competent evidence that could be admitted at trial showing that there is a genuine issue of material fact. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 11 (Pon. 1989).

In considering a motion for summary judgment, the court is required to view facts and draw inferences in a light as favorable to the party against whom the judgment is sought as may reasonably be done, and the motion may then only be granted if it is clear that there is no genuine issue of material fact and that the moving party must prevail as a matter of law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 3 (Pon. 1991).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect, the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 7 (Pon. 1991).

Where a defendant has not filed a response to a motion for summary judgment within the ten days provided by FSM Civil Rule 6(d), the defendant is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Actouka v. Kolonia Town, 5 FSM R. 121, 123 (Pon. 1991).

In a motion for summary judgment the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 295 (Kos. 1992).

Without supporting affidavits the non-moving party cannot rely on inferences culled from the record to raise inferences as to the existence of genuine issues of material fact unless the non-movant has shown affidavits are unavailable. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The burden of showing a lack of triable issues of fact belongs to the moving party. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 52 (Pon. 1993).

In determining whether triable issues exist, the court must view the facts presented and inferences made in the light most favorable to the party against whom summary judgment is sought. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 52 (Pon. 1993).

In a summary judgment motion plaintiff's burden of establishing the lack of any triable issue of fact extends to affirmative defenses as well as to plaintiff's own positive allegations. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

Where both the plaintiffs and defendant claim that the other party is liable and dispute the amounts, viewing the plaintiffs' motion for summary judgment in the light most favorable to the defendant, genuine issues of triable material fact remain precluding summary judgment. House of Travel v. Neth, 6 FSM R. 402, 403 (Pon. 1994).

A defendant's mere denial that the calendar was used for advertising purposes does not set forth specific facts to show that this is a genuine issue for trial as an adverse party must do when faced with a motion for summary judgment. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party. The burden of showing a lack of triable issues of fact belongs to the moving party. Adams v. Etscheit, 6 FSM R. 580, 582 (App. 1994).

Where the resolution of the legal questions raised by a summary judgment motion will not perceptibly shorten the trial, and a determination at trial of the fact issues may eliminate the need for deciding the legal questions which the motion raises, a court may exercise its discretion to reserve judgment on the motion until after trial. This exercise of discretion is even more appropriate where the legal issues raised involve constitutional adjudication because unnecessary constitutional adjudication is to be avoided. Pohnpei v. Kailis, 6 FSM R. 619, 620 (Pon. 1994).

Once a party moving for summary judgment has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Urban v. Salvador, 7 FSM R. 29, 30 (Pon. 1995).

Unsupported statements of counsel at oral argument do not qualify as competent evidence upon which a court could find a genuine issue for trial. Urban v. Salvador, 7 FSM R. 29, 32 (Pon. 1995).

Where the opposing party has not filed a timely response to a motion for summary judgment, that party is deemed to have consented to the granting of the motion and the court may decline to hear oral argument. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 n.1 (Chk. 1995).

The series "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," found in Civil Rule 56 merely lists those items the court shall consider on a summary judgment motion if present in the file. Not all of these items need to be present for a court to grant summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

Admissions obtained through a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 85 (Chk. 1995).

Although a motion to file a late response to the requests for admissions is considered a motion to amend or withdraw, an untimely response to a summary judgment motion cannot be deemed a motion to withdraw or amend. Mailo v. Bae Fa Fishing Co., 7 FSM R. 83, 86 (Chk. 1995).

Failure to file a response to a summary judgment motion constitutes a consent to the motion. But even when an opposing party consents to a motion, that motion may only be granted if it is well grounded in fact and law. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

Once the party moving for summary judgment presents a *prima facie* case of entitlement to judgment, the burden shifts to the non-moving party to raise some question of material fact. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

If, when determining whether a triable issue of material fact exists and viewing the facts presented and the inferences drawn from them in the light most favorable to the non-moving party, a court determines that there is only one reasonable conclusion that can be drawn from the undisputed facts, there is no question of material fact and the case is ripe for disposition by summary judgment. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 (Pon. 1995).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable issue of fact. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

If the adverse party does not respond to a motion for summary judgment with affidavits or other competent evidence, summary judgment, if appropriate, shall be entered against the adverse party. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

A court must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the facts presented and inferences made in the light most favorable to the nonmoving party, and the burden of showing a lack of triable issues of fact belongs to the moving party. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Nanpei v. Kihara, 7 FSM R. 319, 325 (App. 1995).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM R. 381, 382 (Yap 1996).

When moving for a summary adjudication of all issues of a cause of action, including affirmative defenses, a plaintiff must put forth evidence that there is no issue of material fact and that the defense is insufficient as a matter of law. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM R. 387, 389 (Pon. 1996).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 394 (Pon. 1996).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 444 (Pon. 1996).

A plaintiff seeking an interlocutory adjudication of all issues of a cause of action must show that there is no issue of material fact and that the affirmative defenses raised are insufficient as a matter of law. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526-27 (Pon. 1996).

Argument alone cannot create a disputed fact that will defeat summary judgment. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Once the party moving for summary judgment presents a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden. It must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 82 (Pon. 1997).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of

material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. Chuuk v. Secretary of Finance, 8 FSM R. 353, 362 (Pon. 1998).

In summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. Ueda v. Stephen, 9 FSM R. 195, 197 (Chk. S. Ct. Tr. 1999).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party cannot rely upon a general denial in its answer to overcome the affidavit and the documents produced by the moving party and may not rely on unsubstantiated denials of liability or inferences culled from the record to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Marar v. Chuuk, 9 FSM R. 313, 314-15 (Chk. 2000).

When no response to a summary judgment motion appears in the record and the opposing party does not appear at the noticed hearing the motion is due to be granted for that reason alone. Udot Municipality v. Chuuk, 9 FSM R. 586, 587 (Chk. S. Ct. Tr. 2000).

A plaintiff's summary judgment motion that fails to comply with the certification requirements of Civil Procedure Rule 6(d) may, for this reason alone, be denied without prejudice and may be renewed subject to plaintiff making reasonable attempts to reach agreements on its disposition with the defendants affected by any order requested. O'Sullivan v. Panuelo, 9 FSM R. 589, 597 (Pon. 2000).

In a summary judgment motion the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the non-moving party may not rely on unsubstantiated denials of liability to carry its burden to produce evidence showing a genuine issue of material fact, but must present affidavits or some other competent evidence that would be admissible at trial that there is a genuine issue of material fact. Counsel's unsupported statements at oral argument do not qualify as competent evidence upon which a court could find a genuine issue for trial. Argument alone cannot create a disputed fact that will defeat summary judgment. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden; it must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183, 184 (Pon. 2001).

In considering a summary judgment motion, a court must view the facts and the inferences to be drawn from those facts in the light most favorable to the party opposing the motion. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

When the court stated in its order granting a preliminary injunction that it would consider at the time of trial all of the admissible evidence which was presented at the preliminary injunction hearing, the court thereby made that evidence part of the record. It is thus also appropriate to consider this uncontroverted

evidence to decide summary judgment motions. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 n.3 (Pon. 2001).

In order for an issue of fact to be material, it must be supported by substantial probative evidence in the record, going beyond the allegations. The evidence must be in the nature of facts – not conclusions, unsupported allegations of counsel, opposing party's own contradictions in the record, or opposing party's subjective characterizations. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

On a summary judgment motion, the court must penetrate the allegations of fact contained in pleadings and look to any evidential source to determine whether there is an issue of fact. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

When a summary judgment motion is made and supported, an adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts, by affidavits or otherwise, showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, must be entered against the adverse party. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

In a summary judgment motion, the moving party has the initial burden of showing that there are no triable issues of fact. Once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party must show that there is enough evidence supporting his position to justify a decision upholding his claim by a reasonable trier of fact. Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Bank of the FSM v. Hebel, 10 FSM R. 279, 282-83 (Pon. 2001).

In order to be successful on a summary judgment motion, the plaintiff must also overcome all affirmative defenses that the defendants have raised. Bank of the FSM v. Hebel, 10 FSM R. 279, 284 (Pon. 2001).

When the plaintiff has presented a prima facie case of entitlement to summary judgment, the burden shifted to the defendant to produce evidence showing a genuine issue of material fact to defeat plaintiff's motion for summary judgment, and when the defendant has not shown there is a triable issue of fact which will defeat the plaintiff's summary judgment motion, the plaintiff is entitled to judgment as a matter of law. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

In considering a summary judgment motion, the court must view the facts and the inferences to be drawn from those facts in a light as favorable to the non-moving party as reasonably may be done. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

When a movant makes out a prima facie case for summary judgment which, if uncontroverted at trial, would entitle it to a directed verdict on the issue, then the burden shifts to the nonmoving party to produce some competent evidence admissible at trial showing that there is a genuine issue of fact. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

The inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits. The process of evaluating the proof in this way takes place in the framework of viewing the facts in a light as favorable to the nonmovant as may reasonably be done. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

A summary judgment motion filed with the complaint is premature because a party seeking to recover upon a claim may only move for summary judgment after the expiration of 20 days from the action's commencement. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

When a plaintiff seeks summary judgment on the question of liability, it must initiate the inquiry even as to affirmative defenses. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

When the opposing party does not respond to a motion for summary judgment, the court must still ascertain that the basis for the motion is well grounded both in fact and law. To make this determination the court requires at least some quantum of factual material competent under Rule 56(c) on the question of the affirmative defenses or the motion will be denied. FSM Dev. Bank v. Arthur, 10 FSM R. 293, 294 (Pon. 2001).

An opposition to a summary judgment motion that merely states that the defendants do not understand how the plaintiff arrived at its figure and rely on their answer that they lack sufficient knowledge as to the exact amount owed does not create an genuine issue of material fact. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344-45 (Chk. 2001).

When a moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the non-moving party may not rely on unsubstantiated denials of liability or denials in its answer to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

When the defendants have presented no evidence, competent or otherwise, that the plaintiff's figure is incorrect, there is no genuine issue as to the amount owed. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

A plaintiff's motion for summary judgment has the obligation to clearly establish the lack of any triable issue of fact as to any affirmative defenses. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

A summary judgment motion that deals only with the note and the balance owed and fails to respond to the defendants' affirmative defenses will be denied. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. The non-moving party must show that there is enough evidence supporting its position to justify a decision upholding his claim by a reasonable trier of fact. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

The court, in considering a summary judgment motion, must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

For a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, and must set forth such facts as would be admissible in evidence. An adverse party may not

rest upon the mere allegations or denials of his pleading, but must set forth by affidavit or otherwise, specific facts showing that there is a genuine issue for trial. The facts are viewed in the light most favorable to the nonmovant. Skilling v. Kosrae, 10 FSM R. 448, 450 (Kos. S. Ct. Tr. 2001).

When an opposing party fails to respond to a motion for summary judgment, the court must still determine that there is a good basis both in law and in fact for the granting of the motion. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 476 (Pon. 2001).

When a plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 476 (Pon. 2001).

In determining whether a genuine issue of material fact exists under Rule 56(c), a court will consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

When factual differences in the bank and development authority loan documents and the promissory note and loan agreement raise genuine issues of material fact, summary judgment for either party is precluded. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480-81 (Pon. 2001).

After the movant has made out a *prima facie* case for summary judgment, a shifting of the burden occurs which requires the responding party to come forward with evidence to show that a genuine issue of material fact exists, and in so doing the responding party may not look to unsubstantiated denial of liability but must come forward with competent evidence, admissible at trial, to establish that there is a genuine issue of fact. Unsupported factual assertions are insufficient to oppose a motion for summary judgment. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

A defendant moving for summary judgment may rely on the absence of evidence to support an essential element of the plaintiff's case. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

When a movant has demonstrated that no genuine issue of material fact exists, he must still show that applicable law entitles him to judgment in his favor. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

In responding to a summary judgment motion, an adverse party may not rest upon the mere allegations or denials of its pleading, but the adverse party's response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, will be entered against the adverse party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

Only when the opposing parties submit affidavits that set forth specific facts showing a genuine issue for trial will summary judgment be barred. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002).

In considering a summary judgment motion, the court will consider pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, and the scope of the foregoing is sufficient to encompass sworn trial testimony where that testimony goes to the same contamination and subsequent causation issues raised in the instant case. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on

which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

When the plaintiff fails to guide the court to any part of the record that contains a competent opinion based on the facts of this case that contradicts the defendants' expert's competent opinion in a manner sufficient to raise an issue of fact, summary judgment for the defendants is appropriate. Adolip v. Mobil Oil Micronesia, Inc., 10 FSM R. 587, 590 (Pon. 2002).

When the plaintiff offered no objection to the defendants' expert's competent opinion and does not point to any part of the record that contains a countervailing, competent opinion based on the facts of the case that is sufficient to raise an issue of fact, summary judgment for the defendants is appropriate. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining, and that it is entitled to judgment as a matter of law. Once it has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 628 (Pon. 2002).

Argument alone cannot create a disputed fact that will defeat summary judgment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

A summary judgment movant must go forward as to the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

When it appears that triable issues of fact would still exist that would compel denial of the motion even if the court were to convert the motion from one to dismiss for failure to state a claim to one for summary judgment because matter outside the pleadings was included, the court will instead exercise its discretion to set the case for trial at the earliest opportunity. William v. Director of Public Works, 11 FSM R. 45, 47 (Chk. S. Ct. Tr. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

When questions of fact and law exist as to liability for interest charges, a cross motion for summary judgment which seeks dismissal of the interest claim will be denied. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

Once a movant has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99 (Pon. 2002).

The plaintiffs have made a prima facie case for a trespass cause of action when they have established that they own the land pursuant to certificates of title and that the defendants are on the property without their consent, but in order to determine whether the plaintiffs should be granted summary judgment, the court needs to consider the defendants' arguments in opposition to the plaintiffs' motion, and if the defendants' arguments fail to establish a genuine issue of material fact exists, then it is appropriate for the court to enter summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

A partial summary judgment motion will be denied when it does not address the non-movant's affirmative defenses, when there are issues of fact related to the movants' entitlement to recover, and when the movants have not established as a matter of law that the non-movants' affirmative defenses will not be successful. Island Homes Constr. Corp. v. Falcam, 11 FSM R. 414, 416 (Pon. 2003).

When the defendants have failed to file any opposition to the plaintiff's summary judgment motion, they are deemed to have consented to the granting of that motion. LPP Mortgage, Ltd. v. Ladore, 11 FSM R. 601, 603 (Pon. 2003).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Goyo Corp. v. Christian, 12 FSM R. 140, 145-46 (Pon. 2003).

A party opposing a summary judgment motion may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of material fact. When the non-moving party fails to present competent evidence in response to a properly supported summary judgment motion, the court must evaluate the moving party's evidentiary submissions and any other admissible evidence to determine if the movant has presented a prima facie case of entitlement to summary judgment. If the movant has presented such a prima facie case, the movant is entitled to summary judgment. Goyo Corp. v. Christian, 12 FSM R. 140, 146-47 (Pon. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM R. 140, 148 (Pon. 2003).

When defendants' counsel supplied his own opinion that the plaintiff no longer exists based on a review

of documents that were prepared by one person and translated by a second person, neither of whom supplied affidavits signifying that the statements were sworn and based on personal knowledge, defendants' counsel's affidavit clearly is not based on his personal knowledge and cannot be considered competent evidence for purposes of opposing plaintiff's summary judgment motion or to support defendants' cross-motion for summary judgment and motion to dismiss. And when the plaintiff submits affidavits of its bankruptcy trustee and its Guam representative, which are based on these individuals' personal knowledge and clearly establish that it was not liquidated, the defendants have not provided competent evidence to make the fact of the plaintiff's corporate status a material dispute, and the defendants' summary judgment motion must be denied. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

Failure to file a response to a summary judgment motion constitutes a consent to that motion; but even when an opposing party consents to a motion, that motion may only be granted if it is well grounded in fact and in law. Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003).

The party opposing a summary judgment motion may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of material fact. Fredrick v. Smith, 12 FSM R. 150, 153 (Pon. 2003).

Civil Rule 56(d) provides that when summary judgment has been denied such that trial is necessary, the court shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

Once a party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court must if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. But when the material facts center on what the defendants actually believed at the relevant times, not to mention disputed questions about who said what to whom and when, and since the determination of these facts will turn on credibility, it is not practicable within the meaning of Rule 56(d) for the court to make a finding on what material facts exist without substantial controversy. This determination must await trial. Wortel v. Bickett, 12 FSM R. 223, 227-28 (Kos. 2003).

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden of showing a lack of triable issues of fact belongs to the moving party, and when the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore denied. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

Summary judgment may be granted only if there is no genuine issue as to any material fact and the

moving party is entitled to judgment as a matter of law. Once a *prima facie* case of entitlement to judgment has been presented, the burden shifts to the non-moving party to raise a question of material fact. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 304 (Pon. 2004).

Before an insurance company can obtain summary judgment on an action for enforcement of a premium note, the defenses available to the enforcement of a premium note must be addressed. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden, but must present some competent evidence that would be admissible at trial to demonstrate that there is a genuine issue of fact, and that there is enough evidence supporting its position to justify a decision upholding its claim by a reasonable trier of fact. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

Unsupported factual assertions are insufficient to oppose a motion for summary judgment. Dereas v. Eas, 12 FSM R. 629, 632 (Chk. S. Ct. Tr. 2004).

When a movant requests an extension of time to do additional discovery in order to resist a summary judgment motion, the movant must demonstrate that the proposed discovery would lead to facts essential to justify the opposition to the motion, but when, even with the benefit of additional time to make an offer of proof, the movant has come forward with nothing to show how an extension would lead to facts essential to opposing a summary judgment motion, the motion for an extension will be denied. Joe v. Kosrae, 13 FSM R. 45, 46-47 (Kos. 2004).

When there is a summary judgment motion pending to which no response has been filed, under Civil Procedure Rule 6(d), failure to respond to a motion is deemed consent to the granting of the motion. However, there still must exist a good basis in law and fact upon which to grant the motion. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

When the moving party has made out a prima facie case that there are no triable issues of fact and that he is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. A nonmovant's failure to respond to a summary judgment motion, is a failure to meet his burden to overcome the plaintiff's prima facie case. In order to succeed on a summary judgment motion, the plaintiff must also overcome all affirmative defenses that the defendant has raised. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Rule 56(d) provides that when a motion for summary judgment is denied, the court shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. Such a finding may facilitate the orderly litigation of certain cases. But if the court determines that entering a partial summary judgment by identifying the facts that no longer may be disputed would not materially expedite the adjudication process, it may decline to do so. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

When the case does not appear to be unduly complex notwithstanding the fact that medical malpractice is alleged, and when, in the interest of a smooth narrative at trial, it is the better course to consider each party's entire presentation at that time, the court finds that findings of fact under Rule 56(d) would not expedite the adjudication process in the case, and therefore declines to make such findings. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

Argument alone cannot create a disputed fact. The nonmoving party has the burden to show by competent evidence that there is a triable issue of fact. Allen v. Kosrae, 13 FSM R. 325, 329 (Kos. S. Ct. Tr. 2005).

When a case proceeds to trial, the burden of going forward with evidence as to affirmative defenses is normally on the defendant. However, when the plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issues of fact. The burden extends to affirmative defenses as well as to the plaintiff's own positive allegations. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

A movant must address affirmative defenses in requesting summary judgment. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005).

Once the party moving for summary judgment presents a prima facie case of its entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. A nonmovant's failure to respond to a summary judgment motion, is a failure to meet his burden to overcome the plaintiff's prima facie case. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Once the party moving for summary judgment has presented a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. An adverse party opposing summary judgment may not rest upon the mere allegations or denials of his pleading, but must respond by affidavits (or some competent evidence that would be admissible at trial) setting forth specific facts showing that there is a genuine issue for trial, and that there is enough evidence supporting its position to justify a decision upholding his claim by a reasonable trier of fact. Unsupported factual assertions are insufficient to oppose a summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

If a plaintiff moves for summary judgment on an affirmative defense, putting forth arguments and evidence indicating that there is no material fact at issue and that the affirmative defense is insufficient as a matter of law, the party asserting the affirmative defense must produce some evidence or the moving party is entitled to partial summary judgment. Dereas v. Eas, 14 FSM R. 446, 453 (Chk. S. Ct. Tr. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

A summary judgment movant must go forward on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party cannot rely upon a general denial in its answer to overcome the affidavit and the documents produced by the moving party and may not rely on unsubstantiated denials of liability or inferences culled from the record to carry its burden, but must present some competent evidence that would be admissible at trial that there is a genuine issue of material fact. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547 (Chk. 2007).

When an adverse party fails to respond to a pending summary judgment motion, the party's failure to respond constitutes a consent to the granting of the motion, but does not automatically result in a granting of the motion. There still must exist a good basis in law and in fact upon which to grant the motion.

American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 (Pon. 2007).

In determining whether summary judgment is appropriate, the court must view the facts presented and inferences made in the light most favorable to the non-moving party. The burden of showing a lack of triable issues of fact rests with the moving party. Once the moving party has satisfied its burden, the non-moving party, in order to avoid summary judgment, must produce evidence showing that a genuine issue of material fact exists. To satisfy its burden, the non-moving party may not rely on unsubstantiated denials of liability but must present competent evidence, that would be admissible at trial and that shows there is a genuine issue of material fact. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 (Pon. 2007).

Unauthenticated exhibits to unverified complaints do not normally constitute admissible evidence. However, when the defendant's answer admits that the exhibits to the complaint represent true and correct copies of the invoices signed by him, in light of defendant's authenticating admission, the invoices attached to the unverified complaint constitute competent, admissible evidence that is properly considered by the court on a summary judgment motion. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 52 n.2 (Pon. 2007).

To overcome a *prima facie* case of entitlement to summary judgment, the non-moving party cannot rely on unsubstantiated denials to carry his burden, but must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

In a summary judgment motion, supporting and opposing affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

A non-moving party cannot rest upon the allegations or mere denials in his pleading, but must respond by affidavits setting forth specific facts showing that there is a genuine issue for trial. When the non-movant has not produced any such evidence that would be admissible at trial, but has promised that he will introduce such evidence later, his mere representation that such evidence exists and will appear some time later and be introduced at trial does not constitute production of competent evidence. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

A promise to produce admissible evidence at some future time is not the production of admissible evidence in response to a summary judgment motion. A contention that evidence will be introduced and that it will show certain things is hearsay, and hearsay is generally not admissible evidence, and thus cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Dereas v. Eas, 15 FSM R. 135, 140 (Chk. S. Ct. Tr. 2007).

In ruling on a summary judgment motion, the court considers the pleadings, depositions, answers to interrogatories, admissions and affidavits that are present in the file although not all of these items need to be present for a court to grant summary judgment. Once the moving party has made out a *prima facie* case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable issue of fact and cannot merely deny the summary judgment motion's allegations but must set forth specific evidence that would be admissible at trial to show that there is a genuine issue for trial. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

A party responding to a summary judgment motion may not rely on a mere denial to stave off summary judgment in the movant's favor, but at the same time, the burden of showing a lack of issues of fact necessitating a trial lies with the moving party. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

Just as a non-movant may not rely on a mere denial to stave off summary judgment, so the movant

may not rely on a mere allegation in the complaint to establish her prima facie case for purposes of a summary judgment motion since the court must look beyond the pleadings to the competent evidence presented to determine whether a genuine fact issue exists. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the non-moving party then has the burden to show by competent evidence that there is a triable material issue of fact. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

Although the plaintiffs' summary judgment motion was granted, no judgment will be entered at this time when one cause of action remains outstanding and unadjudicated. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

When no response has been filed to a pending summary judgment motion, the non-movant's failure to respond is deemed a consent to the motion, but the motion still must have a sound basis in law and fact in order for the court to grant it, and even though the non-movant's non-response to a summary judgment motion constitutes a failure to overcome the plaintiff's prima facie case, the movant plaintiff still must also overcome all affirmative defenses that the defendant has raised in order to succeed on his summary judgment motion. Saimon v. Wainit, 16 FSM R. 143, 146 (Chk. 2008).

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. When a summary judgment motion is made and supported as provided, the non-moving party may not rest upon mere allegations or denials of the adverse party's pleading, but the non-moving party's response, by affidavits or as otherwise provided, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, will be entered against the adverse party. Smith v. Nimea, 16 FSM R. 186, 189-90 (Pon. 2008).

When the trial court denies a summary judgment motion it should delineate between those material facts that are in dispute and those that are not, but when such an exercise would not materially expedite the adjudication process, the court may direct the parties to address the concerns themselves by a pre-trial order. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

The rules of civil procedure do not prevent the filing of a summary judgment motion before the filing of an answer. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 (Chk. S. Ct. Tr. 2008).

If the court converts a motion to dismiss to one for summary judgment, the parties must be given a reasonable opportunity to prepare so that no party is taken by surprise, and if issues of fact remain after the conversion, the court will deny the motion and set the case for trial. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218, 221 n.4 (Chk. S. Ct. Tr. 2008).

There is no requirement that a party wait until after its discovery has been answered before moving for summary judgment since a summary judgment motion may be filed at any time after the expiration of 20 days from the commencement of the action. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 284 (Chk. 2009).

A summary judgment movant must go forward not only on its allegations but also on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 285 (Chk. 2009).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that could be admitted at trial, that there is a genuine issue of material fact. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

When the summary judgment opponents do not offer any affidavits or exhibits or point to any other competent evidence that would support their position, they have not met their burden of showing by competent evidence that could be admitted at trial showing that there is a genuine issue of material fact because argument alone cannot create a disputed fact that will defeat summary judgment. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

A court must deny a summary judgment motion unless, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, it finds that there is no genuine issue as to any material fact and the that moving party is entitled to judgment as a matter of law. The movant bears the burden of showing a lack of triable issues of fact, and must go forward not only on its allegations but also on the nonmovant's affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the movant's own factual allegations. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 337 (Chk. 2009).

A denial of a request for reconsideration does not mean that a partial adjudication order is not subject to revision at any time. Even though the trial court may be very unlikely to revise it, the order remains legally capable of being revised (under the appropriate circumstances) any time before the trial court enters a final judgment. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A court can enter judgment on less than all of the claims in a case only if the court makes both an express determination that there is no just cause for delay and an express direction for entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Smith v. Nimea, 16 FSM R. 346, 348-49 (App. 2009).

When a defendant did not provide responses to the plaintiffs' requests for admissions, the requests should be deemed admitted and admissions obtained through such a failure to respond to requests for admissions may be used as the factual basis for summary judgment. Barker v. Chuuk, 16 FSM R. 537, 538-39 (Chk. S. Ct. Tr. 2009).

Although an opposing party has consented to a motion, that motion may only be granted if it is well grounded in fact and law, so that when a defendant, in its written responses, admitted the allegations in the plaintiffs' requests for admissions, the plaintiffs' motion for partial summary judgment against that defendant is well grounded in fact and law. Barker v. Chuuk, 16 FSM R. 537, 539 (Chk. S. Ct. Tr. 2009).

Although the defendants may be deemed to have admitted damages in a certain amount, when partial summary judgment is granted to the plaintiffs on the defendants' liability, the court may require an evidentiary hearing to determine an appropriate damages award. Barker v. Chuuk, 16 FSM R. 537, 539 (Chk. S. Ct. Tr. 2009).

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant's, instead of the appellee's, favor. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A summary judgment movant, since he bears the burden of showing a lack of triable issues of fact, must go forward not only on his allegations but also on the nonmovants' affirmative defenses, since the burden of demonstrating that no triable fact issues exist encompasses affirmative defenses as well as the

movant's own factual allegations. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

When there may be some facts in dispute with respect to other issues in a case, their presence will not bar summary judgment if they are not material to the issue presented for summary judgment. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

In order to succeed on a summary judgment motion, the movant must also overcome all the non-movant's affirmative defenses. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010).

Under FSM Civil Rule 56(e), supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. The first requisite is that the information the affidavits contain (as opposed to the affidavits themselves) would be admissible at trial. Thus, ex parte affidavits, which are not admissible at trial, are appropriate on a summary-judgment hearing to the extent they contain admissible information. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 193-94 (Pon. 2010).

The function of summary-judgment motion affidavits is not to resolve disputed factual issues but only to determine if any factual issues are in dispute. It is the policy of rule 56(e) to allow the affidavit to contain evidentiary matter, which if the affiant were in court and testified on the stand, would be admissible as part of his testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

There is no requirement that a summary judgment affiant submit to a deposition in order for his affidavit to be properly before the court for the purpose of the summary judgment motion. There is also no requirement that the affiant later testify at trial or his summary judgment affidavit will retroactively be stricken if he is unable to. Therefore affidavits filed in already-decided motions or in a pending motion will not be stricken from the record regardless of whether affiant completes his deposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

A summary judgment, interlocutory in character, may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages, which means that, if there is a genuine issue as to the amount of damages but not as to liability, summary judgment may nevertheless be granted on an interlocutory basis, that is, the summary judgment would not be a final disposition of the entire case. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 436-37 (App. 2011).

The trial court has an obligation to view facts and reasonable inferences that can be made from those facts in the light most favorable to the party against whom summary judgment is sought. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

It would be a gross disservice to the interests of justice not ever to have a hearing on the issue of damages for a successful civil rights claim and when the trial court was silent as to this particular issue, the trial court cannot have foreclosed the claimant's right to a hearing on the actual damages flowing from the civil rights violation, so that the matter will be remanded to the trial court for further determination as to actual damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

In order to succeed on its summary judgment motion a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 (Chk. 2011).

Where the court has rejected, either explicitly or implicitly, the defendants' affirmative defenses when it

earlier denied the defendants' motion to dismiss, the movant's failure in its summary judgment motion to address the defendants' affirmative defenses is not fatal. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 & n.2 (Chk. 2011).

Under Rule 56, the court must deny a summary judgment motion unless it, viewing the facts and inferences in the light most favorable to the nonmovant, finds that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

Once a movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-movant to present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 570 (Pon. 2011).

At the summary judgment stage, the nonmovant plaintiff must show that it has admissible evidence of damages that were proximately caused by the contract breach. It does not need to prove the exact amount of damages or the extent of the damages. But it must show that it has admissible evidence that can. The time to do that is now, or never. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When a party has failed to disclose an alleged incident and seems to have knowingly concealed it until it had to respond to the opposing party's summary judgment motion, it should not be allowed to put this allegation before the court. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

Since narrowing issues actually in dispute is one function of discovery, a party may not benefit at the summary judgment stage by tendering evidence it was under a discovery obligation to produce, but did not. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

When a party was asked in discovery for the instances where it was alleged to have offered or given gratuities and the opposing party disclosed only one incident, the opposing party is limited to that instance and cannot seek to introduce evidence of another instance in its summary judgment opposition. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 575 (Pon. 2011).

An affidavit opposing summary judgment must be made on personal knowledge and when it is not it is not competent evidence and cannot rebut a prima facie showing that the movant is entitled to summary judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584 (Pon. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b) provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

Since failure to oppose a motion is generally deemed a consent to the motion when a party has not filed a response to a summary judgment motion, that party is deemed to have consented to the granting of the motion, but even then, the court still needs good grounds before it can grant the motion. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 610 (Chk. 2011).

Since a partial summary judgment is subject to revision at any time before the entry of final judgment on all the claims presented in the action, a party will have the opportunity, either upon a further motion for

summary judgment or at trial, to show that the trial court's findings in a partial summary judgment are clearly erroneous or unsupported by any credible evidence. FSM v. Shun Tien 606, 18 FSM R. 79, 81-82 (Pon. 2011).

When the court is considering revision of a partial summary judgment, it must provide the parties with notice adequate to give them an opportunity to present evidence relating to any revived issues at trial. FSM v. Shun Tien 606, 18 FSM R. 79, 82 (Pon. 2011).

A litigant may, under Rule 59(e), move for reconsideration of an order granting summary judgment or move to alter or amend the judgment derived from that order and the court has a responsibility to hear that motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

Summary judgment will ordinarily not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted, particularly when the party seeking to alter or amend the judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence. Motions for reconsideration cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A motion to alter or amend judgment will be denied when no valid reason was given why the movant could not have produced, as part of his summary judgment motion or his opposition to his opponent's summary judgment motion, the evidence now relied on to seek reconsideration because it was all available to him before the cross motions for summary judgment were filed and before those motions were heard. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

Summary judgment will not be altered on the basis of a movant's supplemental exhibits and affidavits since that additional evidence could have been timely submitted if he had exercised due diligence. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

The party moving for summary judgment bears the initial burden of establishing the absence of genuine issues of material fact. If the moving party does not have the burden of proof at trial, it may carry its initial burden by producing evidence negating an essential element of the non-moving party's case, or, after suitable discovery, the moving party may show that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

In considering a summary judgment motion, the court must view the facts and inferences in a light that is most favorable to the party opposing the motion. A moving party is entitled to summary judgment when it has demonstrated that there are no genuine issues of material fact remaining and that it is entitled to judgment as a matter of law. Once the moving party has presented a *prima facie* case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing a genuine issue of material fact. The non-moving party may not rely on unsubstantiated denials of liability to carry its burden; it must present some competent evidence that would be admissible at trial which demonstrates that there is a genuine issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 478 (Pon. 2012).

When a summary judgment motion is made and supported, an adverse party may not rest upon mere allegations, but must in response, through affidavits or other competent evidence, set forth specific facts showing there is a genuine issue for trial, and, if the adverse party does not so respond, summary judgment, if appropriate must be entered against the adverse party. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

In order for an issue of fact to be shown it must be supported by substantial probative evidence in the record, going beyond mere allegations. The evidence must be in the nature of facts, not conclusions, counsel's unsupported allegations, opposing party's own contradictions in the record, or opposing party's subjective characterizations. On a summary judgment motion, the court must penetrate the factual

allegations contained in the pleadings and look to any evidential source to determine whether there is an issue of fact. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

There is no requirement that a party wait until a scheduling order has been issued or until after its discovery has been answered before moving for summary judgment since a summary judgment motion may be filed at any time after the expiration of 20 days from the action's commencement. Peniknos v. Nakasone, 18 FSM R. 470, 489 (Pon. 2012).

FSM Civil Rule 56(d) provides that when summary judgment has been denied such that trial is necessary, the court must if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540-41 (Yap 2013).

Once a moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

The moving party has the burden of showing a lack of triable issues of fact, and a plaintiff, in order to succeed on a summary judgment motion, must also overcome all affirmative defenses that the defendant has raised. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

Regardless of whether the non-movants filed a written opposition, a movant plaintiff, when requesting summary judgment, must overcome all of the adverse parties' affirmative defenses and counterclaims in order to be entitled to summary judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

When moving for a summary adjudication, a plaintiff must put forth evidence that there is no issue of material fact and that the affirmative defense is insufficient as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

Until the movants address the defendants' affirmative defense and the defendants have had the opportunity to show that their defense – their independent action for relief from a Trust Territory High Court judgment – presents a genuine issue of material fact and is not insufficient as a matter of law, the movants are not entitled to summary judgment on their trespass cause of action. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

In order to succeed on a summary judgment motion, a movant plaintiff must also overcome all affirmative defenses that the defendant has raised. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

When the moving party has made out a prima facie case that there are no triable issues of fact and that it is entitled to summary judgment as a matter of law, the nonmoving party then has the burden to show by competent evidence that there is a triable material issue of fact. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When faced with a defendant's summary judgment motion, the court cannot give any heed to the nonmovant plaintiff's assertion that he intends to call witnesses at trial to support his emotional distress claim or to his assertion that a favorable judgment on his wrongful termination claims will amply support this claim because the plaintiff must show that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

The party moving for summary judgment has the initial burden of showing that there are no triable issues of fact, but once the moving party has done this, the burden then shifts to the nonmoving party to show that there is a triable issue. The nonmoving party cannot simply disagree with the moving party and attempt to show, through affidavits or otherwise, that there is a triable issue but must submit admissible, competent evidence setting forth specific facts such that there is enough evidence supporting his position to

justify a decision upholding his claim by a reasonable finder of fact. FSM v. Kuo Rong 113, 20 FSM R. 27, 30-31 (Yap 2015).

Regardless of whether the non-movants filed a written opposition, a plaintiff, when moving for summary judgment, must overcome all of the adverse parties' affirmative defenses and counterclaims in order to be entitled to summary judgment. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A plaintiff, when moving for a summary adjudication, must show that there is no issue of material fact and must also show that the affirmative defenses are insufficient as a matter of law. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

Lack of subject-matter jurisdiction is a defense that can be raised at any time by any party or by the court. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A summary judgment motion may be made at any time by a party against whom a claim is asserted. Thus, a defendant can make a summary judgment motion even though it has not yet filed an answer. Fuji Enterprises v. Jacob, 20 FSM R. 121, 124 (Pon. 2015).

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, and once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

In considering a summary judgment motion, the court must view the facts and inferences in a light most favorable to the party opposing the motion. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

Once the movant presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence that depicts a genuine issue of material fact remains to be resolved. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 222 (Pon. 2015).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

In determining the merit of a summary judgment motion, a court will consider all the facts in the light most favorable to the non-moving party. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. When the trial court denies a summary judgment motion, it should delineate between those material facts that are in dispute and those that are not. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce evidence showing that a genuine issue of material fact remains for resolution. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for

summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment. The plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Since the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, the plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

To overcome a *prima facie* case of entitlement to summary judgment, the non-moving party cannot rely on mere allegations or denials in her pleading or unsubstantiated denials to carry her burden, but must present some competent evidence by affidavits or as otherwise provided in Rule 56, that would be admissible at trial set forth specific facts showing that there is a genuine issue of fact. If she does not so respond, summary judgment, if appropriate, will be entered against her. Jacob v. Johnny, 20 FSM R. 612, 618-19 (Pon. 2016).

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from that party. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

– Venue

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: 1) the mother initiated the litigation; 2) the couple was married and resided together; 3) their children were born and have always lived; and 4) the mother still resides. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. FSM v. M.T. HL Achiever (I), 7 FSM R. 221, 222-23 (Chk. 1995).

When an alleged tax liability arose in a state and the government attempted to collect the tax in that state, venue is proper in that state under 6 F.S.M.C. 301(2), which allows an action, other than contract, to be brought where the cause of action arose. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

6 F.S.M.C. 304(3) allows part or all of a case to be heard in a state other than the one in which it was brought "if the interests of justice were served thereby." Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 114 (Chk. 1997).

Venue does not refer to jurisdiction at all. Jurisdiction of the court means the inherent power to decide a case, whereas venue designates the particular county or city in which a court with jurisdiction may hear and determine the case. On the other hand, forum means a place of jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached

does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

An action not connected with a contract may be brought in a court within whose jurisdiction the cause of action arose. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 & n.3 (Pon. 2001).

Pohnpei is the appropriate venue for a case against a foreign defendant when all of the claims asserted by plaintiff allegedly arose in Pohnpei. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. The rule, however, is not absolute, but is a principle of sound judicial administration that the first-filed suit should have priority absent special circumstances. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

The court with jurisdiction over the first-filed case may exercise its discretion to stay proceedings, under the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. The first-filed rule is neither absolute nor mechanically applied but advances the inherently fair concept that the party that commenced the first suit generally ought to be the party to obtain its choice of venue. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

When this suit and a later-filed suit were both filed in the FSM Supreme Court trial division but in different venues, the first in Chuuk and the second in Pohnpei; when the defendants are all present in Chuuk but have adopted a position analogous to an interpleader in that they are subject to competing claims for the same property and will comply with any court determination about its ownership; when the central issue to be resolved before any final judicial order is whether a bill of sale is enforceable or should be rescinded or reformed; and when this central issue is directly joined in the Pohnpei suit where the stock transfer and the events surrounding it took place, where the transferor and transferee both reside, and where the evidence and witnesses are present, this, at least to resolve this crucial central issue, would (based on judicial economy and economy of time and effort for counsel and for the litigants) favor a Pohnpei venue if it can be resolved there without undue delay. Since, even though complete relief for all the parties in this case cannot be granted in the Pohnpei suit, the Pohnpei suit should expeditiously resolve this suit's central issue without imposing hardship on the parties and leave this court to dispose of the peripheral issues, adjudication of this first-filed action will be stayed pending the resolution of the later-filed FSM Supreme Court suit in Pohnpei. Mori v. Hasiguchi, 16 FSM R. 382, 385-86 (Chk. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

The general rule is that the first-filed lawsuit has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. This rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

Although the rule permits dismissal if a case is filed in an improper venue, a more likely remedy, particularly when the litigation has progressed beyond its early stages, is not to dismiss the case but for the court to, on its own motion or otherwise, transfer it to any venue in which the matter might properly have been brought. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

Any action, other than one involving real estate, in which one of the parties is an FSM resident shall be brought in the state in which one of the parties thereto lives or has his usual place of business or employment or, if the action is based upon a wrong not connected with a contract, it may be brought in the state in which the cause of action arose. Marsolo v. Esa, 18 FSM R. 59, 66 & n.5 (Chk. 2011).

When the matter being litigated is of great interest only to the public in Chuuk, the interests of justice would permit it to be heard in Chuuk. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

The venue statute permits, if the interests of justice will be served thereby, the FSM Supreme Court to transfer a trial division case from one venue (state) within the trial division to another venue or to be heard in part in a venue other than the venue in which the case was originally filed. The statute does not require that the venue be changed but leaves to the court's discretion whether to hear all or part of the case in a venue other than where the case was filed. Mori v. Hasiguchi, 19 FSM R. 222, 224-25 (Chk. 2013).

A motion to try the plaintiff's remaining claim in a Pohnpei venue will, in the court's discretion, be denied when the venue statute required that he originally file his complaint in Chuuk because Chuuk was the state in which all the defendants could be found and the statute favors convenience for the defendants over convenience for the plaintiff. But because transporting the Pohnpei witnesses to Chuuk would work a distinct hardship on the plaintiff, the court will allow him three months to depose all the needed Pohnpei witnesses in order to preserve their testimony for trial and if he prevails at trial, the expenses of these depositions shall be taxed as costs payable by the defendants. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party is not an adjudication upon the merits. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

In an admiralty case, when the suit is against a vessel or other property, the proper venue is the state within which the ship, goods, or other thing involved can be seized. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

The venue statutes do not impair a court's jurisdiction over any matter involving a party who does not make timely and sufficient objection to the venue. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

For *in rem* actions, venue is jurisdictional. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

Under 6 F.S.M.C. 301(1), a civil action should be brought in a court within whose jurisdiction the largest number of defendants live, or have their usual places of business, or employment. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For venue purposes, the FSM national government, as a matter of law, is present in every state. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 & n.2 (Pon. 2017).

When a matter is brought in the wrong venue, the court in which it is brought may, on its own motion or otherwise, transfer it to any court in which the matter might properly have been brought. Thus, a case against a vessel present in Yap but filed in the FSM Supreme Court trial division, Pohnpei venue will be transferred from the Pohnpei venue to the Yap venue. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132-33 (Pon. 2017).

CIVIL RIGHTS

Discrimination as it is experienced in the United States is not the same as is experienced in Pohnpei. Therefore, the decisions of this court will consider decisions of the United States and other common law jurisdictions, but the court will only apply them as may be appropriate in the individual circumstances. Paulus v. Pohnpei, 3 FSM R. 208, 215 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 244 (Pon. S. Ct. Tr. 1987).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. Alep v. United States, 6 FSM R. 214, 219 (Chk. 1993).