

Put succinctly, the petition's deficiencies did not mean, as the National Election Director claimed they did, that the National Election Director lacked jurisdiction over Lambert's election contest petition. Those deficiencies did mean that the National Election Director could and should have denied Lambert's petition because Lambert did not show by a preponderance of the evidence that allowing a revote at the Guam and Honolulu special polling places could have changed the outcome. Lambert's claimed errors 4), 5), and 7) would not change this outcome, and so are not considered.

Therefore, although the reason – lack of jurisdiction – that the National Election Director gave for denying Lambert's petition was not in accordance with law, we may affirm the National Election Director's denial on its result because of the lack of evidence on which the National Election Director could have granted the petition.

IV. CONCLUSION

ACCORDINGLY, we hereby affirm the National Election Director's denial of Lambert's election contest petition for the reasons given above, and not for the erroneous reason that the National Election Director gave in his April 15, 2021 decision.

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FSM SUPREME COURT TRIAL DIVISION

MARIANNE B. SETIK, individually and as	)	CIVIL ACTION NO. 2021-002
Administratrix of the Estate of Raymond Setik, and	)	
IRENE SETIK, individually and as Administratrix	)	
of the Estate of Manney Setik, and Personal	)	
Representatives of the Heirs of Raymond Setik,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
FELICIANO PERMAN, POHNPEI COURT OF	)	
LAND TENURE, and POHNPEI STATE	)	
GOVERNMENT,	)	
	)	
Defendants.	)	
_____	)	

ABSTENTION; ORDER OF DISMISSAL AND REMAND

Chang B. William  
Specially Assigned Justice

Decided: May 12, 2021

APPEARANCES:

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## HEADNOTES

### Jurisdiction – Diversity

The FSM Supreme Court holds concurrent jurisdiction over a case based on diversity of citizenship when the plaintiffs are all Chuukese citizens who reside and vote in Chuuk while the defendants are all Pohnpeian citizens. Setik v. Perman, 23 FSM R. 293, 295 (Pon. 2021).

### Federalism – Abstention

When the FSM Supreme Court has subject-matter jurisdiction based on the parties' diversity of citizenship, the court may abstain from the case and remand it to the Pohnpei state court although there is no statutory or constitutional provisions to permit it. The FSM Supreme Court, in carrying out its judicial responsibilities, has inherent power to abstain partially or completely from exercising jurisdiction in a particular case, in order to permit state decision makers to resolve a particular issue or to exercise jurisdiction over part or all of a case. Setik v. Perman, 23 FSM R. 293, 295 (Pon. 2021).

### Federalism – Abstention

The choice of whether to abstain from a decision is one that lies wholly within the FSM Supreme Court's discretion, and the judge must not undertake that decision lightly. Setik v. Perman, 23 FSM R. 293, 295-96 (Pon. 2021).

### Federalism – Abstention

When the court's jurisdiction is based on the diversity of citizenship, its discretionary power to abstain must be exercised carefully and sparingly, but the cautious, reasoned use of the abstention doctrine is not a violation of the court's duty, or of the litigant's constitutional right. Setik v. Perman, 23 FSM R. 293, 296 (Pon. 2021).

### Federalism – Abstention

One major rationale for abstention is that the state court is the better court to decide an issue which involves state power and particularly strong identifiable state interest, and one general area of broad national deference to state courts has been in cases involving disposition of land. Setik v. Perman, 23 FSM R. 293, 296 (Pon. 2021).

### Federalism – Abstention

The FSM Supreme Court may abstain from a case when the State of Pohnpei has strong interest in a matter's resolution because, not only are the state and its Court of Land Tenure named parties, but the complaint also challenges state court orders and alleges fraud against the Pohnpei Court of Land Tenure and because the state court may be in a better decision to resolve those issues, particularly when there is a request for preliminary injunction that stemmed from the state court order to vacate the premises in question. Setik v. Perman, 23 FSM R. 293, 296 (Pon. 2021).

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### COURT'S OPINION

CHANG B. WILLIAM, Specially Assigned Justice:

#### A. *Background*

Feliciano Perman (Defendant Perman), on January 11, 2021, filed a Verified Petition for Removal under General Court Order (GCO) 1992-2. FSMDB filed a Motion to Intervene and Proposed Motion to Dismiss Complaint on January 12, 2021. Thereafter, the Defendants have filed several motions for preliminary injunction and requests for expedited hearing.

Several other pleadings were filed by the parties, including: 1) the Plaintiffs' Motion to Dismiss Petition and Remand Complaint to Pohnpei State Supreme Court, filed on March 24, 2021; The Defendants' Joint Opposition to Plaintiffs' Motion to Dismiss and Remand, filed on March 29, 2021; and the Plaintiffs' Motion to Strike and Reply to Defendants' Joint Opposition to Plaintiff's Motion to dismiss and Remand, filed on April 7, 2021.

For the reasons stated below, these pleadings, except for the motions for preliminary injunction and FSMDB's Motion to Intervene, are hereby stricken from the record of this case. This case is hereby dismissed and remanded to the Pohnpei Supreme Court, from which it was removed. This dismissal is without prejudice. Provided that the Defendants can demonstrate that this Court has exclusive jurisdiction over this case, and if properly removed from Pohnpei State Court, then it will entertain this matter for adjudication.

#### B. *Removal*

The Plaintiffs filed this case against the Defendants in Pohnpei State Court, docketed as PCA Civil No. 35-21. Plaintiffs seek civil rights violation, misrepresentation and fraud, gross negligence, judgment, and attorney's fees and cost of suit. These claims appear to have stemmed from this Court's orders in Civil Action 2007-008: order of sale for parcel no. 025-A-158, executed by FSMDB, and the order transferring title to Defendant Perman, carried out by the Pohnpei Court of Land Tenure issuing the certificate of title of the said parcel to Defendant Perman. See FSM Dev. Bank v. Setik, 20 FSM R. 85, 90 (Pon. 2015).

Defendant Perman's Verified Petition for Removal maintains that subject matter jurisdiction lies within the FSM Supreme Court, by virtue of GCO 1992-2 and Article XI, Section 6(b) of the FSM Constitution. The petitioner avers that diversity of citizenship exists because the Plaintiffs are all Chuukese citizens who reside and vote in Chuuk while the Defendants are all Pohnpeian citizens. Thus, the FSM Supreme Court holds concurrent jurisdiction over this case based on diversity of citizenship under Article XI, Section 6(b) of the FSM Constitution.

#### C. *Abstention*

Although this Court has subject-matter jurisdiction based on diversity of citizenship of the parties, the Court is inclined to abstain from this case and remand it to the Pohnpei State Court. There is no statutory or constitutional provisions to permit it, but it is clear this Court, in carrying out its judicial responsibilities, does have inherent power to abstain partially or completely from exercising jurisdiction in a particular case, in order to permit state decision makers to resolve a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991). The choice of whether to abstain from a decision is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not

undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989). In addition, in diversity actions, this Court's "discretionary power to abstain must be exercised carefully and sparingly." Damarlane v. Damarlane, 19 FSM R. 97, 108-09 (App. 2013). Furthermore, even when this Court's jurisdiction is based on the diversity of citizenship of the parties within the meaning of article XI, section 6(b) of the Constitution of the Federated States of Micronesia, "cautious, reasoned use of the doctrine of abstention is not a violation of this Court's duty, or of the litigant's constitutional right." Pryor, 4 FSM R. at 141 (citing Ponape Transfer & Storage v. Federated Shipping Co., 4 FSM R. 37 (Pon. 1989)).

This Court has held that, among others, one major rationale for abstention is that the state court is the better court to decide an issue which involves state power and particularly strong identifiable state interest. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005). Further, one general area of broad national deference to state courts has been in cases involving disposition of land. Pryor v. Moses, 4 FSM R. at 142.

This case is one that involves dispute over land. However, this alone may not warrant abstention. The Court takes pain in abstaining from this case recognizing that there are many factors and risks at stake. Nevertheless, after much contemplation, the Court is of the opinion that it is a necessary course of action to take in order to resolve the matter once and for all.

In addition to this case involving land dispute, the state of Pohnpei has strong interest in the resolution of this matter. Not only are the state of Pohnpei and its Court of Land Tenure named parties, but the Complaint appears to be challenging Pohnpei State Court orders and alleging fraud against the Pohnpei Court of Land Tenure. In a recent Pohnpei State Court case, PCA No. 242-29, the court, pursuant to multiple binding decisions of this Court resulting in the Court of Land Tenure's transfer of title, found in favor of Defendant Perman and ordered Plaintiff Irene Setik and those under her control or supervision to vacate parcel no. 025-A-158. Perhaps the Pohnpei State Court is in a better decision to resolve those issues.

The Court is concerned at the Plaintiffs' reluctance and quite frankly their disregard of multiple binding court decisions in Setik v. FSM Development Bank, 21 FSM R. 605 (App. 2018); Setik v. Mendiola, 21 FSM R. 634 (App. 2018); and Setik v. Perman, 22 FSM R. 105 (App. 2018). To add further insult, the present Complaint is strikingly similar to that filed in Setik v. Perman, 21 FSM R. 31 (Pon. 2016) which was dismissed and affirmed on appeal. This Court believes that the Pohnpei State Court is in the best position to resolve this case once and for all; therefore it must dismiss and remand it to the state court.

Finally, the decision to abstain from this case is based on the fact that there is a request for preliminary injunction that stemmed from the order to vacate the premises in question. The order to vacate, which precipitated the alleged acts that occurred on the premises as well as the alleged threats, was entered by the Pohnpei State Court. The Pohnpei State Court and the Pohnpei State Police are much more familiar with the incidences surrounding this case and the Pohnpei State Police, if an injunction were to be granted, is much closer to the situation. As such, this Court will abstain from this case.

#### D. Conclusion

In conclusion, and for the reasons stated above, all pleadings filed by the parties, except for FSMDB's Motion to Intervene and the Defendant's Motions for Preliminary Injunction and Requests for Hearing, are hereby stricken from the record. Further, this Court, in exercising its inherent power and discretion, hereby abstains from the case. This matter is hereby dismissed and remanded to the Pohnpei State Court. This dismissal and remand is without prejudice.