BUSINESS ORGANIZATIONS

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

Business entities take three general forms – a sole proprietorship, a partnership of some form, or a corporation. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Business expenses (such as rent, utilities, or support-staff salaries) that cannot be allocated to a particular product or service; fixed or ordinary operating costs are considered overhead. Smith v. Nimea, 19 FSM R. 163, 171 n.4 (App. 2013).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

– Cooperatives

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass=n, 9 FSM R. 297, 300 (Pon. 2000).

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).

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).

– Corporations

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens.

Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Noncitizen corporations are those which are not wholly owned by Federated States of Micronesia citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (Pon. 1987).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 381 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The de facto doctrine, which is employed by courts to treat a business as a corporation even though it has not met all legal requirements for incorporation, is of no relevance to the regulatory prohibition against the corporation engaging in business until the corporation meets minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v. FSM, 5 FSM R. 375, 377 (App. 1992).

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 Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, ' 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 187 (Pon. 1993).

Corporate regulation is governed by national law unless or until the states undertake to

establish corporate codes of their own. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 105 (Pon. 1995).

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 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).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Under generally prevailing law, a corporation's shareholders or members may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over the corporation's management. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix

v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in the property entrusted to it for a common purpose. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

If a business enterprise is a corporation, it is a different person than the owner himself. A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in it. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382

(Chk. 2005).

The Pohnpei Business Corporation Act of 1994 provides an avenue of relief for a dissenting minority shareholder in certain situations whereby the dissenting shareholders can demand that the corporation pay them the fair value of their shares, and that they shall then cease to have any interest in the corporation. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has the capacity to sue and be sued in its own name. 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).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

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, a juridical person, must act through a natural person. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (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).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In

a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation's regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation's shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization's constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

A corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly

exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

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).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 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).

A corporation is an artificial person created by law, as the representative of persons who contribute to or become holders of shares in it. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as when a corporation and its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

Although a corporation may appear only through licensed counsel, there is no requirement that such licensed attorney must not be an employee of the corporation that he or she represents. The licensed attorney may be an employee of the corporation. Helgenberger v. Ramp & Mida Law Firm, 21 FSM R. 445, 451 (Pon. 2018).

Title 54, chapter 3, the Corporate Income Tax Act of 2004, is the FSM's tax regime for major corporations, which are defined as those corporations that are not principally engaged in business in the Federated States of Micronesia as a bank, that were formed after January 1,

2005, and whose shareholders' equity or paid in capital is $1 million or more, or whose control group has a shareholders' equity or paid in capital of $10 million or more, or that are Title 37 captive insurance companies. These, otherwise foreign, entities incorporate in, and pay income taxes to, the FSM on their world-wide taxable revenue. Chuuk v. FSM, 22 FSM R. 85, 89 (Chk. 2018).

For a number of years after the FSM's creation, and after the end of the Trust Territory government's authority, the national government was the only entity that registered and dissolved corporations until the states gradually developed that ability, and even now, it is still possible to get a corporate charter from the national government. Chuuk v. FSM, 22 FSM R. 85, 94 (Chk. 2018).

The alter ego doctrine treats two entities that are nominally separate as the same when a corporation has acted unjustly or fraudulently, and specific factors that are determinative include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

Generally, a corporation and its shareholders are deemed separate entities and shareholders are not liable to third parties beyond their initial investment in the corporation's stock, but, when the shareholders treat the corporation not as a separate entity but rather as an instrument to conduct their own personal business, the court may pierce the corporate veil for purposes of liability. Smith v. Nimea, 22 FSM R. 131, 135 (Pon. 2019).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a non-profit corporation has no shareholders, its citizenship for diversity purposes should be the citizenship of its members, or, if it has no members, of its incorporators. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

An Act of Congress created the FSM Development Bank as a corporate entity. That statute, now FSM Code Title 30, operates as the bank's articles of incorporation, charter, and corporate registration. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 184-85 (Pon. 2019).

– Corporations – Dissolution

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Under the Pohnpei Business Corporation Act of 1994, courts in a shareholder's action when it is established that the acts of the directors or those in control are illegal, oppressive, or fraudulent; or when the corporate assets are being misapplied or wasted, have the power to issue an injunction, appoint a receiver, or receiver pendente lite, to preserve the corporate assets and carry on the corporation's business until a full hearing can be had. The appointed receiver may then, under the court's supervision, liquidate the corporation's assets and dissolve the corporation. McVey v. Etscheit, 13 FSM R. 473, 475 (Pon. 2005).

Since the Pohnpei Legislature probably never intended that the Pohnpei Business

Corporation Act's involuntary liquidation and dissolution provisions were to be used by a competitor to eliminate its competition, the court must tread warily in such a case. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has a perpetual existence until dissolved by the appropriate authority. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Under Pohnpei state law, the court has the full power to order a corporation's assets and business liquidated if certain statutory conditions have been established in a lawsuit by a shareholder. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Under Pohnpei state law, it is sufficient ground for the court to order a corporation's liquidation if the shareholders are deadlocked in voting power and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

The protracted inability of the shareholders to obtain a quorum for a shareholders' meeting is, of itself, a hopeless deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

It is sufficient ground for the court to order a corporation's liquidation when the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and when irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When each of the two shareholders had two members of the board that supported their shareholder's position on financing expansion and when neither side could agree on the selection of a fifth director or appears to have tried, this was a true deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a

directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

The court can order a corporation's liquidation when the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

For a 50% shareholder to run a corporation as if it were his sole proprietorship is oppressive to the other 50% shareholder, and for the corporation to refuse to cooperate with an accounting firm to facilitate its audit review of the corporation is also oppressive behavior. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

A corporation's liquidation may be ordered when the corporate assets are being misapplied or wasted. A corporation's unauthorized $30,000 non-interest bearing loan to a company, which was and is controlled by a director, was a misapplication or a waste of the corporation's corporate assets, and the corporation's refusal to cooperate with an accounting firm to facilitate its audit review of the corporation leaves the impression that other corporate assets may have been wasted or misapplied. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Under Pohnpei law, a liquidating receiver can be appointed only after a hearing on notice. At the hearing, the court will consider what powers and duties the liquidating receiver should have so that the appointment order can, as required by statute, clearly state what those powers are and the receiver's compensation. A liquidating receiver may be required to post a bond. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 & n.2 (Pon. 2014).

An audit will be part of any liquidating receiver's duties. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Under Pohnpei law, the court appointing a liquidating receiver for a corporation shall have exclusive jurisdiction of the corporation and its property, wherever situated. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Once the liquidating receiver is appointed, liquidation (sale) of the corporation will proceed thereafter unless the circumstances drastically change and it is established that cause for liquidation no longer exists. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 244 (Pon. 2014).

– Corporations – Liability

Although many family-incorporated enterprises commingle family and business affairs, the Pohnpei Supreme Court will not make a family's personal assets available to satisfy a judicially mandated monetary award because there is still limited knowledge of business laws in Pohnpei. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

The C.P.A. regulations mandate that corporate directors and incorporators will be held liable for the corporation's debts if the corporation engages in business without meeting the minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a

person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Any incorporator or director is liable for violations of the regulations governing incorporation unless he can prove an affirmative defense. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526 (Pon. 1996).

The de facto corporation defense is insufficient as a matter of law when a company has received its corporate charter. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 527 (Pon. 1996).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly attempt to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on a theory of ratification. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation, with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM R. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its

liabilities. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

Under ordinary circumstances, a parent corporation will not be held liable for the obligations of its subsidiary. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

The mere fact of a loan to a subsidiary is not sufficient to confer liability for the loan on the parent. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 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).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity 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 and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

The *alter ego* doctrine treats two entities that are nominally separate as the same when 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. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300-01 (Yap 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).

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).

A corporation is an artificial, juridical person separate from its owners and is thus a separate party. Thus, when a corporation enters into a contract under its name, and the contract is executed for the corporation "by" an individual, that individual, members of the corporate board, and employees of the corporation are not liable for any breach, absent unjust or fraudulent behavior. Hartman v. Henry, 22 FSM R. 292, 296 (Pon. 2019).

– Corporations – Stock and Stockholders

Par value and stated value of stock are arbitrarily chosen figures which often bear no relationship to the price paid. These figures may be considerably less than the actual value of the stock and have little significance to creditors or others seeking to determine the financial strength of a corporation in the FSM. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 51 (Pon. 1985).

In the Federated States of Micronesia, distribution of dividends in cash or in property may be made only from earned surplus. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The $1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than $1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

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).

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).

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).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Pohnpei state law requires that corporations conduct annual shareholders' meetings and provides that a majority of the shares entitled to vote, represented in person or by proxy constitute a quorum at a shareholders' meeting. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Only a corporation's board of directors has the power to either declare and pay a dividend or pay a capital distribution, and then only if certain circumstances exist. An audit may need to be conducted to determine if those conditions exist. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Since it is the government's intent that the FSM Development Bank have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in FSM land and waters, no stock in the Bank may be owned by any person or entity whose partial ownership of the Bank would cause the Bank to lose such capacity under applicable law, and any transfer of Bank stock to such a person or entity will be null, void, and of no effect. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

– Joint Enterprises

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).

A project that has a number of acts or objectives for a limited period of time and is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise, is a joint enterprise. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 65 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

– Partnerships

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate

entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A partnership is an association of two or more persons to carry on as co-owners a business for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partners are those persons who contribute either property or money to carry on a joint business for their common benefit, and who own and share its profits in certain proportions. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A limited partnership is a legal fiction usually created by statute. Thus in a business arrangement based upon an oral agreement, the business is a general partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

A partnership created by oral agreement is considered a "partnership at will," with no definite term, which may be terminated at any time by the express will of any one partner. In re Estate of Setik, 12 FSM R. 423, 430 n.16 (Chk. S. Ct. Tr. 2004).

Designating one general partner as the managing partner does not destroy the unity of interest necessary for the creation of a partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

Once it is established that a partnership exists, there is a presumption that the partnership continues until the contrary is shown, or until it is dissolved and its affairs are wound up, or until knowledge of its termination comes to persons dealing with the partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

When the primary force behind the growth of a business over the years was the decedent, and that another's role was as a passive investor, it is reasonable to conclude that the decedent's share of the partnership exceeded his paid in capital share and included a significant interest arising out of his creation of and his services to the partnership. Thus, to the extent that the decedent's interest included substantial services to the partnership, it is not unreasonable to conclude that the other had a partnership interest significantly less than the actual share of his financial contribution. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

An unincorporated business entity owned by two persons is a partnership. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

Under the right against self-incrimination, neither a partnership nor the individual partners are shielded from compelled production of partnership records on self-incrimination grounds. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as

when a corporation and its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

If a party is an unincorporated association, then its citizenship is the citizenship of the association's individual members. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

– Sole Proprietorships

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

If more than one person has an interest, of some form and extent, in a business entity, the entity cannot be considered a "sole" proprietorship. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

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).

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 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 corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).