FSM SUPREME COURT TRIAL DIVISION

YOSILYN CARL, as the administrator of the estate of Linda Carl, and the ESTATE OF LINDA CARL, Plaintiffs, vs. ANNA MENDIOLA, individually and in her official capacity as the President and Chief Executive Officer of FSM Development Bank, JOHN SOHL, in his official capacity as Chairman of the FSM Development Bank Board of Directors, and FEDERATED STATES OF MICRONESIA DEVELOPMENT BANK, Defendants.	)	CIVIL ACTION NO. 2015-010

NOTICE OF ERRATA; ORDER GRANTING MOTION TO DISMISS; DENYING RULE 11 SANCTIONS

Dennis K. Yamase
Chief Justice

Decided: May 3, 2021

APPEARANCES:

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HEADNOTES

Civil Procedure – Pleadings – Amendment; Civil Procedure – Service of Process

When a motion to amend is granted, the plaintiffs must file and serve a separate pleading. This is the case even when the amended complaint is filed without leave of court or when a defendant, who was served the original complaint, is in default when an amended complaint is filed. Carl v. Mendiola, 23 FSM R. 251, 255 (Pon. 2021).

Civil Procedure – Pleadings – Amendment

When the plaintiff was granted leave to file an amended complaint, which was filed but never served on the defendants, the amended complaint will be stricken from the record, but the court will retain personal

jurisdiction over the defendants based on the initial complaint and its service of process. Carl v. Mendiola, 23 FSM R. 251, 256 (Pon. 2021).

Civil Procedure – Dismissal; Civil Procedure – Parties – Substitution of

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 on the record, 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. Carl v. Mendiola, 23 FSM R. 251, 256-57 (Pon. 2021).

Civil Procedure – 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. Carl v. Mendiola, 23 FSM R. 251, 257 (Pon. 2021).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Summary Judgment

The court's power to dismiss a case under FSM Civil Rule 12(b)(6) includes converting a Rule 12(b)(6) motion to a Rule 56(c) motion for summary judgment when matters outside the pleadings were presented by the moving party and considered by the court. Carl v. Mendiola, 23 FSM R. 251, 257 (Pon. 2021).

Banks and Banking; Civil Procedure – Dismissal – Before Responsive Pleading

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action to any person for any of the Development Bank's perceived shortcomings. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on upon which relief may be granted. Carl v. Mendiola, 23 FSM R. 251, 257 (Pon. 2021).

Interest and Usury

An interest rate of 7% per annum does not violate the usury statutes prohibiting rates higher than 15% for consumer loans and 24% for commercial loans. Carl v. Mendiola, 23 FSM R. 251, 258 (Pon. 2021).

Interest and Usury

The general rule is that in applying partial payments to an interest-bearing debt, the payment will, in the absence of an agreement or statute to the contrary, be first applied to the interest due. Thus, at the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Carl v. Mendiola, 23 FSM R. 251, 258 (Pon. 2021).

Civil Procedure – Dismissal – Before Responsive Pleading; Interest and Usury

The plaintiffs' blanket assertion that they simply "believe" that the Development Bank has charged a higher interest rate than is permitted under FSM law, without any further assertion as to how this usury violation may have happened, is insufficient to state a claim upon which any relief can be granted. Carl v. Mendiola, 23 FSM R. 251, 258 (Pon. 2021).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Pleadings

Since plaintiffs cannot assert claims or a violation of a right of a third party, such as "the public" and "other customers," and since the plaintiffs' allegations do not show that the bank's actions with regard to the

plaintiff exceeded the initiation and continued prosecution of a court case which the promissory note that the plaintiff had executed expressly provided for, the plaintiffs have asserted a claim for which the court cannot grant any relief. Carl v. Mendiola, 23 FSM R. 251, 258-59 (Pon. 2021).

Torts – Interference with a Contractual Relationship

Under the law of Pohnpei, relief may be granted for a claim of tortious interference with a contractual relationship, when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives or by a third party's improper or unjustified conduct. Carl v. Mendiola, 23 FSM R. 251, 259 (Pon. 2021).

Civil Procedure – Dismissal – Before Responsive Pleading; Torts – Interference with a Contractual Relationship; Torts – Interference with Prospective Business Opportunity

Trying to collect a loan repayment does not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Carl v. Mendiola, 23 FSM R. 251, 259 (Pon. 2021).

Civil Procedure – Sanctions – Rule 11

Rule 11 sanctions for filing a frivolous complaint will not be imposed when the binding precedent – controlling law – was issued after the complaint was filed. Carl v. Mendiola, 23 FSM R. 251, 260 (Pon. 2021).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

A. *Background and Overview of Court Order*

Previously, on March 25, 2021, the Court issued an Order in the above-captioned case requiring each party to submit its position on whether further action should be taken by the Court in this matter, or whether this case should be dismissed. By way of background, the above-captioned case appears to be a challenge to the lending and collection practices of the Development Bank, including an indirect challenge to the judgment previously entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060. Indeed, the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, concerned a loan that Yoshiro and Linda Carl applied for and obtained from the Development Bank. When the borrowers defaulted on the loan, the Development Bank initiated proceedings in this Court to collect the loan. The judgment entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, however, was never satisfied. As such, with the 20-year period for the enforcement of that judgment set to expire, the Development Bank initiated an independent action on that judgment in the case of FSM Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003. In turn, the Court in that case entered a judgment in the amount of $50,215.98, on December 30, 2019, in favor of the Development Bank, and, jointly and severally, against Yosilyn Carl as the administrator of the estate of Linda Carl, and the estate of Linda Carl. This judgment was significant, as it superseded the prior judgment of $45,137.79, that was entered by the Court in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060.[1]

[1] The judgment entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003, on December 30, 2020, is currently the subject of an appeal: Yosilyn Carl v. FSM

The Court's March 25, 2021 Order issued in an effort to address what appeared to be an effort to collaterally attack a 1999 judgment that was itself no longer enforceable. Although it appeared that the above-captioned case might now be moot, it does not appear that the Plaintiffs see it as such. Indeed, in their response to the Court's Order of March 25, 2021, Yosilyn Carl, as the administrator of the estate of Linda Carl, and the estate of Linda Carl, together, objected to the dismissal of this case claiming, that it "is a stand-along case" that has no connection whatsoever to either the February 11, 1999 Judgment of $45,137.79, entered in favor of the Federated States of Micronesia Development Bank, and against Yoshiro Carl and Linda Carl, in the case of or the subsequent, December 30, 2019 Judgment of $50,215.98, entered in favor of the Development Bank, and against Yosilyn Carl as the administrator of the estate of Linda Carl, and the estate of Linda Carl, jointly and severely, in the case of FSM Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003. They reiterate that they have asserted various causes of action against the Development Bank, challenging its lending and collection practices, and which they claim should all be adjudicated regardless of what transpires in the other cases referred to above.

By contrast, the Court received submissions from the Federated States of Micronesia Development Bank, and the estate of Yoshiro Carl, through its administrator Fred Carl, both of whom do not object to the dismissal of this case. In addition, the Development Bank sought clarification on a footnote in the Court's March 25, 2021 Order, which stated that Yosilyn Carl was apparently serving as the administrator to the estates of *both* Yoshiro Carl and Linda Carl.

For the record, the footnote in the Court's Order of March 25, 2021, is incorrect. Yosilyn Carl is serving only as the administrator of the estate of Linda Carl. Fred Carl is serving as the administrator of the estate of Yoshiro Carl, pursuant to an appointment as such by the Pohnpei Supreme Court. In re: Estate of Yoshiro Carl, PCA No. 144-96 (Ord. 7/09/2019). Yosilyn Carl is serving as the administrator of the estate of Linda Carl pursuant to an order of appointment issued by this Court in the case of: In re: Estate of Linda Carl, Civil Action No. 2017-050 (Ord. 3/25/2021).

That aside, and as requested by Yosilyn Carl, and the estate of Linda Carl, the Court will adjudicate the claims at issue in this case, including addressing all the parties' pending motions. In doing so, and as set forth below in more detail, the Court, *inter alia*, grants the Defendants' motion to dismiss the complaint in this case. In doing so, however, the Court denies the Defendants' request for the imposition of sanctions under FSM Civil Rule 11. Accordingly, this case is hereby dismissed.

Development Bank, Appeal No. P2-2020. Although the judgment entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, was itself never appealed, an appeal was instead filed on March 13, 2017, after the Court issued an Order granting the Plaintiff's request for a writ of execution. However, that appeal, which is captioned as Linda Carl et al., v. Federated States of Micronesia Development Bank, Appeal No. P2-2017, was dismissed on June 18, 2018, based upon the Appellants' failure to request a transcript or file their statement of issues on appeal. FSM App. R. 10. In addition, at the time that the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, was initiated, the named-party defendants included: 1) Yoshiro Carl; and 2) Linda Carl. After Yoshiro Carl passed away, his estate, and its administrator, Fred Carl, were substituted as named-party defendants. This is reflected in the caption of the February 11, 1999 judgment that was entered in that case. Thereafter, when Linda Carl also passed way, her estate and its administrator, Yosilyn Carl, were substituted as the named-party defendants in that case. *See In re* the Estate of Linda, Civil Action No. 1997-050 (Ord. Jan. 17, 2018) (appointing Yosilyn as temporary administrator) and (Ord. March 25, 2021) (appointing Yosilyn Carl as permanent administrator). Similarly, while the above-captioned case was initiated, Linda Carl was the sole named-party plaintiff. Following Linda Carl's death, her estate and its administrator, again, Yosilyn Carl, were substituted as the named-party plaintiffs in this case.

B. *Disposition of Pending Motions*

1. *Review of Pending Pleadings*

The complaint in this case asserts five separate causes of action against the Defendants arising from a loan that the Plaintiff and her late husband, Yoshiro Carl, applied for and obtained from the Development Bank. In a nutshell, the plaintiff challenges both the lending and loan collection practices of the Development Bank, as managed by the various individuals who are named as co-defendants in this case. Indeed, in a separate filing, captioned as Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, the Development Bank, which is in the role of a defendant in this case, has been attempting to collect the now defaulted loan from the Plaintiff and her husband. Thus, the complaint in this case appears to be a collateral attack on the judgment entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, although it does not specifically mention that underlying case.

In response to the complaint, the Defendants filed a motion to dismiss this case along with a request for sanctions under FSM Civil Rule 11, which governs frivolous litigation. The Plaintiff, in turn, opposed these motions. Thereafter both parties filed various reply, surreply and supplemental pleadings in support of their respective position about the requested dismissal of this case. In addition, on October 14, 2016, the Court granted the Plaintiff's request to amend her complaint. The amended complaint asserted additional causes of action against the same defendants. The record, however, shows that there is no return of service, or other indication, that the amended complaint was ever served on the defendants. As such, the defendants moved for that amended complaint to be stricken from the record in this case.

Most recently, on December 30, 2020, the Defendants filed a suggestion of death on the record for the named-party defendant John Sohl, who was sued in his official capacity as the chairman of the board of directors for the Development Bank. To date, there has been no nomination of a substitute defendant who is serving in the capacity as chairman of the Development Bank's board of directors. In any event, no opposition or response of any kind has been filed by the Plaintiff.

2. *Procedural Matters*

a. *Amended Complaint*

The Defendants' motion to strike the Plaintiff's amended complaint from the record in this case is granted. As this Court has explained, "[w]hen 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) (emphasis added). This is the case even when the amended complaint is filed without leave of court, *see* Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005) (amended complaint can be filed as a matter of course before an answer to the original complaint has been filed), or when a defendant served with the original complaint is in default at the time an amended complaint is filed. *See* People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012) (FSM Civil 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). *See also* Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (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). *Cf.* Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005) (service of an 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).

In this case, the record shows that the Plaintiff, after being granted leave of court to do so, filed her amended complaint on November 2, 2016. A summons addressed to all of the named-party defendants was issued by the clerk of court on the same day. *See* Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006) (a summons must be served with the complaint on each defendant). The record, however, is utterly void of any return of service – or even a certificate of service – showing that the summons and amended complaint were ever served on the Defendants. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012) (a second amended complaint, even if it alleges no new facts, but does contain new or additional claims for relief and potential increased financial liability . . . it must be served . . . if the class plaintiffs intend to hold [the defendant] liable on the second amended complaint's new legal theories and claims).

This Court has previously concluded that under FSM Civil Rule 4, "[w]hen the court file does not contain a return of service for a summons . . . [for an] 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." Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011). In such a case, and in the lack of any information showing that the Court has personal jurisdiction over a defendant, the Court may, under FSM Civil Rule 4, dismiss the case for lack of service of process on them. In this instance, the Court already has jurisdiction over the parties based upon the filing of the initial complaint, which the Defendants have responded to by filing a motion to dismiss. This results in the amended complaint filed with the court being immaterial. Accordingly, the Plaintiff's amended complaint is hereby stricken from the record of this case. FSM Civ. R. 12(f).

b. *Suggestion of Death on the Record: John Sohl*

With regard to the Defendants' suggestion of death on the record, the Court hereby dismisses John Sohl, in his official capacity as the chairman of the board of directors for the Development Bank. Under FSM Civil Rule 25(a)(1), if a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties in the manner provided under FSM Civil Rule 5, and upon persons not parties in the manner provided in FSM Civil Rule 4 for the service of a summons. 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 as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

As this Court has explained, "[s]ince 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). *See* 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).

Here, the Defendants' suggestion of death on the record for the named-party defendant John Sohl was filed on December 30, 2020. More than 90 days has passed since then, and no filing of any kind has been made to substitute a new individual in the place of John Sohl, in his official capacity as the chairman of the Development Bank's board of directors. Accordingly, John Sohl, as a named-party defendant in his official capacity as the chairman of the Development Bank's board of directors, is hereby dismissed from

this case. FSM Civ. R. 25(a)(1). All future pleadings filed in this case shall conform to this dismissal.

3. *Motion to Dismiss*

As noted above, the Plaintiffs oppose the dismissal of this case on the grounds that the $50,215.98 judgment entered in the case of FSM Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003, supersedes the $45,137.79 judgment that was previously entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060. Because the case at hand was filed well before the case of FSM Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003, was ever initiated, it appeared that this case may be an independent cause for relief from the judgment entered in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060. The Plaintiffs, however, maintain that this is not the case, and that this case actually concerns a challenge to the lending and collection practices of the Development Bank. Assuming that to be the case, and assuming that the Plaintiffs – as the real parties in interest who were substituted for the individual who was a borrower of the Development Bank – even have standing to pursue such claims, the Court finds that no relief of any kind can be granted to the Plaintiffs for the various causes of action that they have asserted in their complaint. As such, the Court hereby grants the Defendants' motion to dismiss.

To begin, at issue in the complaint are five causes of action against the Defendants arising from what the Plaintiffs perceive to be illegal and actionable actions undertaken by the Development Bank with regard to both its lending and collections efforts, including: 1) violating of Title 30 of the FSM Code, which is the enabling legislation that established the Development Bank as a public corporation; 2) violating the FSM's usury law; 3) violating the Bank's implied duty of good faith and fair dealing; 4) gross negligence; and 5) tortious interference with business relationships.

In their motion to dismiss, the Defendants maintain that the Plaintiffs have failed to state any claims upon which the Court can grant relief. This Court has long recognized that 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). *See* Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014) (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).

More recently, the Court has explained that its power to dismiss a case under FSM Civil Rule 12(b)(6) includes converting a Rule 12(b)(6) motion to a Rule 56(c) motion for summary judgment when matters outside the pleadings were presented by the moving party and considered by the Court. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 & n.2 (Pon. 2016). *See* Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 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).

a. *Violation of Title 30 of the FSM Code*

That aside, turning to the Plaintiffs' first cause of action, it is well recognized that Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action to any person for any perceived shortcomings of the Development Bank. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on upon which relief may be granted. Salomon v.

Mendiola, 20 FSM R. 138, 141 (Pon. 2015). *See* Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018). Thus, the Plaintiffs' claim that the Defendants somehow violated Title 30 of the FSM Code fails to state a claim upon which any relief can be granted.

b. *Violation of FSM Usury Law*

With regard to their claim that the Defendants' violated the FSM law governing usury, sections 203 and 204 of Title 34 of the FSM Code, respectively, provide that "no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of 15% for consumer credit transactions, and 24% for consumer credit transactions. 34 F.S.M.C. 202(4) (defining "consumer credit transaction") and 202(5) (defining "commercial credit transaction").

While these usury rates are applicable to loans, the payments made by the Plaintiff in this case, at least since February 11, 1999, are applicable to a judgment entered by the Court on that date. Moreover, the stated post-judgment interest rate on that judgment itself is 7% per annum. *See* 6 F.S.M.C. 1401 (judgments actually accrue interest at the rate if 9% per annum). Thus, the Plaintiffs claim at issue here seems misplaced.

In any event, and as this Court has previously explained, the general rule is that in applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Salomon v. Mendiola, 20 FSM R. 138, 140 (Pon. 2015). Further, at the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. *Id.* at 140-41. If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. *Id.* at 141.

The blanket assertion by the Plaintiffs that they simply "believe" that the Development Bank has charged a higher interest rate than is permitted under FSM law, without any further assertion as to how this usury violation may have happened, is insufficient to state a claim upon which any relief can be granted. *See* Setik v. Mendiola, 21 FSM R. 537, 556-57 (App. 2018) (*citing* to 45 AM. JUR. 2d *Interest and Usury* § 75 (rev. ed. 1999)). Accordingly, the Plaintiffs' claim that the Defendants somehow violated the FSM Usury law at Title 34 of the FSM Code fails to state a claim upon which any relief can be granted.

c. *Duty of Good Faith & Fair Dealing*

In this cause of action, the Plaintiffs assert that the Development Bank owes a duty of good faith and fair dealing "to the public, or each and every customer" that the Bank lends money to, and that this purported duty was breached. The Plaintiffs cite as an apparent example of this breached duty, the "oppressive" conduct of the Bank's lawyer in intimidating and harassing the Bank's borrowers in collecting defaulted loans. The Plaintiffs, however, cannot assert claims or a violation of a right of a third party, such as "the public" and other "customers." FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003) (a party must generally assert its own rights and interests). As for Plaintiffs themselves, the allegations do not show that the Bank's actions with regard to Linda Carl exceeded the initiation and continued prosecution of the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-06. Not only did the promissory note that Linda Carl executed and delivered to the Development Bank expressly provide for such litigation, but in this case, the Development Bank is the named-party defendant. This means that the Bank has been

placed in the position of having to defend itself in an adversarial setting. Thus, and accordingly, the Plaintiffs have asserted a claim, no matter how true, which the Court cannot grant any relief.

d. *Gross Negligence*

Similarly, the Plaintiffs' assertions that the Development Bank and the various individuals who are named-party defendants to this case, and who work at the Bank, have been dilatory in the purported duty they owe to the public to train and properly supervise the Bank's employees is, again, misplaced. As noted above, the Plaintiffs cannot assert claims or a violation of a right of a third party, such as "the public" and other "customers." Indeed, this very same claim asserted in the context of another case has already been flatly rejected by this Court's Appellate Division. *See* Setik v. Mendiola, 21 FSM R. 537, 557-58 (App. 2018). Thus, the Plaintiffs' fourth cause of action for alleged negligence is also dismissed for failure to state a claim upon which no relief can be granted.

e. *Tortious Interference with Business Relationships*

Lastly, the Plaintiffs have asserted in their complaint that the Defendants actions of lending money, and then collecting that money when the underlying loan is in default, "contributed to the extinguishment of the [P]laintiff[s]' business." It is recognized that relief may be granted under the law of Pohnpei for a claim of tortious interference with a contractual relationship, when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives or by the improper or unjustified conduct of a third party. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 14 (Pon. 1989).

The allegations at issue here, however, fail to demonstrate how the Defendants' purported business activities contributed to or otherwise caused the demise of the Plaintiffs' business operations. For example, the Plaintiffs do not allege that the Defendants had any communications with individuals who might have engaged in business transactions with the Plaintiff. Instead, the Plaintiff alleges that the mere action of lending money, and collecting on defaulted promissory notes, contributed to the end of her business. As previously determined by this Court, the complained about act in trying to collect a loan repayment does not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015). Indeed, even if the Plaintiffs' business was successful, the fact remains that Linda Carl applied for and received a loan from the Development Bank. Logic dictates that the loan has to be repaid. If it is not repaid, then it is in default. The actions that the Plaintiff of complaining of, no matter how true, could not have resulted in the promissory note for the loan at issue here going into default. The promissory note at issue here went into default when the Plaintiffs' failed to make the payments that they agreed to make to the Development Bank. That the Plaintiffs' business eventually failed does not change this result. Accordingly, and for these reasons, the Plaintiffs' fifth cause of action must also be dismissed for failure to state a claim upon which any relief can be granted.

4. *Rule 11 Sanctions*

Lastly, the Defendants seek the imposition of sanctions against the Plaintiffs for the filing of the complaint in this case, as there was purportedly no inquiry made by counsel to ensure that the factual allegations were well founded, or that the claims were supported by law. For example, with regard to the Plaintiff's usury claim, the Defendants argue that there was no reference in the complaint to the provision of the FSM Code which specifies that interest shall accrue on judgments at the rate of 9% per annum. 6 F.S.M.C. 1401. Here, a judgment was entered in this case on February 11, 1999, with post-judgment interest accruing -- at the less-than-statutory-rate-of-9%-per annum – 7% per annum. Thus, any payments made over the course of the last 16 years towards the satisfaction of the debt in this case, were actually payments

made towards the satisfaction of a judgment. The Defendants further maintain that the complaint in this case makes no reference to the fact that the pending case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 1996-060, even exists.

As noted above, many of the claims asserted by the Defendants have been definitely addressed by the case of Setik v. Mendiola, 21 FSM R. 537 (App. 2018). The Court's Opinion in that case is now binding precedent, or controlling law for many, if not all, of these issues. The record here, however, shows that the complaint in this case was filed prior to the issuance of the Opinion in the case of Setik v. Mendiola, 21 FSM R. 537 (App. 2018). Accordingly, the Court, in exercising its discretion, declines to impose Rule 11 sanctions for the filing of the complaint in this case. This is indeed consistent with the Court's ruling in the case of Setik v. Mendiola, 21 FSM R. 537, 561 (App. 2018), which vacated the imposition of FSM Civil Rule 11 sanctions by the trial court in the underlying case, as the complaint there was filed at a time when there was a lack of controlling law.

C. *Conclusion*

Accordingly, and for the reasons set forth above, the Court hereby grants the Defendants' motion to dismiss. This case is hereby dismissed. Each party shall bear their own costs. The Clerk of Court shall enter judgment accordingly.

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