

FSM SUPREME COURT TRIAL DIVISION

IN RE CONTEMPT OF KAZUHIRO FUJITA )  
and YOSILYN SIGRAH, as the administrator of )  
the Estate of Linda Carl, )

CIVIL ACTION NO. 1996-060

Respondents, )  
\_\_\_\_\_ )

FEDERATED STATES OF MICRONESIA )  
DEVELOPMENT BANK, )

Plaintiff, )

vs. )

YOSILYN CARL, as the administrator of the )  
Estate of Linda Carl, the ESTATE OF LINDA )  
CARL, and the ESTATE OF YOSHIRO CARL, )  
thru its administrator, Fred Carl, )

Defendants, )

KAZUHIRO FUJITA, )

Garnishee. )  
\_\_\_\_\_ )

ORDER STRIKING MOTION TO STAY

Dennis L. Belcourt  
Associate Justice

Decided: September 2, 2021

APPEARANCES:

For the Plaintiff:

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For the Defendants:  
(Y. Carl & Estate of L. Carl)

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*In re* Contempt of Fujita  
23 FSM R. 395 (Pon. 2021)

For the Defendant: Vincent Kallop, Esq.  
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For the Garnishee: Kazuhiro Fujita, *pro se*  
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#### HEADNOTES

Civil Procedure – Filings; Civil Procedure – Service

Under Civil Procedure Rule 5, all filings in a case must be served upon each of the parties. In re Contempt of Fujita, 23 FSM R. 395, 396 (Pon. 2021).

Civil Procedure – Motions; Civil Procedure – Service

The principal importance of the certificate of service is to provide the court with clear proof that service has been accomplished. The rules allow motions to be served on other parties before being filed. The certificate of service accompanying a motion should state whether service was effected personally or by mail. In re Contempt of Fujita, 23 FSM R. 395, 397 (Pon. 2021).

Civil Procedure – Motions; Civil Procedure – Service

When it appears from the certificate of service that the motion was not served on one of the parties and on the garnishee, the court may strike the motion without prejudice, and the moving party may file a renewed motion provided that the renewed motion is served upon all of the parties, including the garnishee. In re Contempt of Fujita, 23 FSM R. 395, 397 (Pon. 2021).

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#### COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

This matter comes before the Court on an August 25, 2021 request for a stay of any further trial-court action in this case pending the outcome of an appeal captioned as: Yosilyn Carl, as the administrator of the Estate of Linda Carl, v. Federated States of Micronesia Development Bank, Appeal No. P9-2021. The motion for a stay was filed by Yosilyn Sigras, as the administrator of the Estate of Linda Carl. The FSM Development Bank opposes any stay, as reflected in its filing of August 26, 2021. For the reasons stated below, the motion to stay at issue here is hereby stricken.

The certificate of service accompanying the motion to stay shows that it was served on the FSM Development Bank by hand delivery, see FSM Civ. R. 5 (service of pleadings to be done by hand delivery or first-class mail only), on August 25, 2021, the same date that the pleading was filed with the Court. As noted above, the FSM Development Bank has opposed the motion to stay. The motion to stay at issue here was served only upon the FSM Development Bank. There is no indication from the certificate of service or from any further filing in the last week, since the motion was filed, that it has been served on Fred Carl, as the administrator of the Estate of Yoshiro Carl, and/or Kazuhiro Fujita, who is the subject of the current ongoing contempt-of-court proceedings.

Under Rule 5 of this Court's Rules of Civil Procedure, all pleadings filed in a case must be served upon each of the parties. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016) (all filings must be served on

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*In re* Contempt of Fujita  
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all parties). The principal importance of the certificate of service is to provide the court with clear proof that service has been accomplished. Helgenberger v. Chung, 20 FSM R. 519, 521 (Pon. 2016). The Court's rules allow motions to be served on other parties prior to being filed. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994). In addition, the certificate of service accompanying the motion should state whether service was effected personally or by mail. Chen Ho Fu v. Salvador, 7 FSM R. 306, 308 n.4 (Pon. 1995). In this case, it appears that no service of the pending motion to stay was performed upon either Fred Carl, as the administrator of the Estate of Yoshiro Carl, and/or Kazuhiro Fujita.

Therefore, the motion to stay filed by Yosilyn Carl, as the administrator of the Estate of Linda Carl, is hereby stricken from the record of this case for failure to comply with Rule 5(a) of the Court's Rules of Civil Procedure. FSM Civ. R. 12. This action by the Court is without prejudice. The moving party may file a renewed motion to stay in this case provided that service of the motion is made upon all of the parties, including Kazuhiro Fujita.

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