

FILED

JUL 13 2012

ASST. CLERK OF COURT
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

CAROLINA LIBOKMETO and
TEMEILANG WASER,

plaintiffs,

v.

TOBEKE MAKRORO,

defendant.

CIVIL ACTION NO. 2012-123

**ORDER DENYING REQUEST FOR A
TEMPORARY RESTRAINING ORDER
AND SCHEDULING HEARING FOR A
PRELIMINARY INJUNCTION**

TO: JOHN SILK, counsel for plaintiffs
TOBEKE MAKRORO, defendant

REQUEST FOR TEMPORARY RESTRAINING ORDER

On July 13, 2012, counsel for the plaintiffs filed with the Court (i) the plaintiffs' Verified Complaint for Declaratory Judgment and Injunctive Relief and (ii) an ex Parte Motion for a Temporary Restraining Order ("TRO") to restrain and enjoin the named defendant and anyone acting on his behalf or under his control from preventing them from constructing their house on Lole Weto, Rairok Village, Majuro Atoll, as alleged in the Complaint. The plaintiffs claim to hold a valid lease from the now deceased alap and senior dri jerbal of the weto.

APPLICABLE LAW

Under Rule 65(b) of the Marshall Islands Rules of Civil Procedure ("MIRCP"), a TRO "may be granted without written or oral notice to the adverse party or that party's attorney only if

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, which have

been made to give the notice and the reasons supporting the party's claim that notice should not be required."

That is, under Rule 65(b) "a court planning to issue a temporary restraining order must be particularly careful that the movant has produced compelling evidence of the threatened irreparable injury and has exhausted all reasonable efforts to give the adverse party notice and an opportunity to be present and introduce evidence at a hearing." Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2951. Additionally, MIRC Rule 65(c) provides that "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

APPLICATION OF THE LAW

The Court need not determine the question of irreparable harm under Rule 65(b)(1) or security under Rule 65(c), as the Rule 65(b)(2) certification was not given.

The plaintiffs' counsel has not certified what efforts, if any, he has taken to give the defendant notice of the TRO request as is required by Rule 65(b)(2). Nor has the plaintiffs' counsel provided the court with sufficient reason for not giving the defendant notice and an opportunity to be heard. Accordingly, the Court cannot issue the requested TRO.

CONCLUSION

For the above reasons, the plaintiffs' request for a TRO is denied. This does not mean that the court will not grant the plaintiffs a preliminary restraining order upon a proper showing. Moreover, this Court sets this matter for preliminary restraining order hearing at 2:00 p.m. on July 17, 2012, before Associate Justice James Plasman.

Date: July 13, 2012.

A handwritten signature in black ink, appearing to be "C. Ingram", written over a horizontal line.

Carl B. Ingram
Chief Justice